This Month's Cover

Rufus Choate (1799-1859) was one of the great nineteenth-century American lawyers and orators. Admitted to practice in 1822 in Massachusetts, he soon gained a wide reputation at the Bar. Although he served in both the Senate and the House of Representatives, his great love was the law, and he declined appointment to the Supreme Court so that he could remain in practice. The line sketch is by Charles W. Moser, of Chicago.

November, 1956

THE AMERICAN BAR ASSOCIATION JOURNAL is published monthly by the AMERICAN BAR ASSOCIATION at 1155 East 60th Street, Chicago 37, Illinois. Entered as second class matter August 25, 1920, at the Post Office at Chicago, Illinois, under the act of August 24, 1912. Price per copy, 75¢; to Members, 50¢; per year, $5.00; to Members, $2.50; to Students in Law Schools, $3.00; to Members of the American Law Student Association, $1.50.
Vol. 42, No. 11. A change of address must reach the JOURNAL office five weeks in advance of its effective date. Be sure to give both old and new addresses.

The President's Page

David F. Maxwell

■ This administration's program of service for lawyers is well under way. A dual concept which might be stated as "Protecting the Present While Providing for the Future" is developing new and attractive projects aimed at providing hitherto unavailable security benefits for our members.

"Protecting the Present" is a new development in group life insurance for lawyers in the middle years. Remember the $20-a-Year Group Life Plan introduced in 1955 after more than two years' research? It went over in less than thirty days when more than 10,000 members took out $36,300,000 of insurance. The tremendous success of that plan made it possible for us to develop a most attractive low-cost plan for lawyers 50 to 70 years old. William Clarke Mason, Chairman of the Special Committee on Group Life Insurance, told me as this goes to press he expected to offer the plan for enrollment about November 10.

"Providing for the Future" is our dynamic grass roots campaign to get out the vote in the next Congress for the counterpart of the so-called "Jenkins-Keogh Bill". The principle to which your administration is giving its all-out support is that all self-employed persons might have the right to set aside in a retirement fund a small percentage of annual income on which income taxes would be deferred. When this is accomplished, those who work for themselves will have tax parity with those who work for others.

The groundwork for obtaining this tax equality for lawyers as well as all other self-employed persons has already been laid. As this goes to press, the country is completely organized on a non-partisan basis with key lawyers of both political persuasions in every state presently soliciting commitments from congressional candidates. From all sections of the country favorable reports are pouring into headquarters.

The most favorable development is the co-operation we are being accorded by other groups whose members would likewise benefit from this bill. A luncheon arranged by John R. Nicholson, Vice Chairman of the Committee on Retirement Benefits, was attended by representatives of the American Medical Association, American Dental Association, American Farm Bureau Federation, American Institute of Accountants and the National Association of Real Estate Boards. Plans were made at that meeting to mobilize the full membership numbering in the millions of all of these organizations in support of the bill and to enlist the co-operation of some thirty-six to forty additional national associations with similar interests. Your President proposes to call representatives of all of these groups together at a meeting in Washington in the early part of December for the purpose of electing an inter-association steering committee to guide the proposal through Congress in 1957.

On the travel front, your President is being kept very busy. I have been much impressed, as my predecessors have been, with the general demeanor, the seriousness of purpose, of my fellow practitioners, and the good fellowship which characterizes their meetings. Everywhere I go I am received with the greatest cordiality and accorded the most gracious hospitality.

My first port of call was Sioux Falls, South Dakota, where I was greeted at the airport by my long-standing friends Roy Willy and George Turner, who were accompanied by Wilber S. Aten, President of the Nebraska State Bar Association. Later we were joined by Dwight Campbell and Melvin T. Woods, with whom I enjoyed exchanging anecdotes. The meetings were quite constructive and stimulating, and I was particularly impressed by the ruggedness and the number in their fifty-year group, to whom they paid special tribute. The climate in South Dakota certainly must be conducive to longevity.

My next stop was at Indianapolis. There I was delighted with the lovely atmosphere and elaborate facilities of the Indianapolis Bar Association's new quarters, and embarrassed because we in Philadelphia, the oldest bar association in the country, have nothing to compare with it. It was a great joy to me to visit there with such old friends as Harold Bredell, Tom Scanlon, and Perry O'Neal, and to meet such an outstanding leader of the Indianapolis Bar, Elbert R. Gilliom, who is doing such a good job as President, and Charlie Fox. The occasion was Law Day in Indianapolis and the Bar turned out in force to pay tribute to the judges of their courts, all of whom were well represented.

Then off to Charlottesville for an interlude with the Army under the aegis of Major General Eugene M. Caffey, Judge Advocate General of the Army, and Colonel Nathaniel B. Rieger, Commandant of the Judge

(*Continued on page 1031*)

published monthly

American Bar Association Journal

the official organ of the American Bar Association

The objects of the American Bar Association, a voluntary association of lawyers of the United States, are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote the administration of justice and the uniformity of legislation and of judicial decisions throughout the nation; to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the public good; to encourage cordial intercourse among the members of the American Bar; and to correlate and promote such activities of the Bar organizations in the nation and in the respective states as are within these objects, in the interest of the legal profession and of the public. Through representation of state, territory and local bar associations in the House of Delegates of the Association, as well as large membership from the Bar of each state and territory, the Association endeavors to reflect, so far as possible, the objectives of the organized Bar of the United States.

There are seventeen Sections for carrying on the work of the Association, each within the jurisdiction defined by its by-laws, as follows: Administrative Law; Antitrust Law; Bar Activities; Corporation, Banking and Business Law; Criminal Law; Insurance Law; International and Comparative Law; Judicial Administration; Labor Relations Law; Legal Education and Admissions to the Bar; Mineral Law; Municipal Law; Patent, Trade-Mark and Copyright Law; Public Utility Law; Real Property, Probate and Trust Law; Taxation; and the Junior Bar Conference. Some issue special publications in their respective fields. Membership in the Junior Bar Conference is limited to members of the Association under the age of 36, who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other Sections.

Any person who is a member in good standing of the Bar of any state or territory of the United States, or of any of the territorial groups, or of any federal, state or territorial court of record, is eligible to membership in the Association on endorsement, nomination and election. Applications for membership require the endorsement and nomination by a member of the Association in good standing. All nominations made pursuant to these provisions are reported to the Board of Governors for election. The Board of Governors may make such investigation concerning the qualifications of an applicant as it shall deem necessary. Four negative votes in the Board of Governors prevent an applicant's election.

Dues are $16.00 a year, except that for the first two years after an applicant's admission to the Bar, the dues are $4.00 per year, and for three years thereafter $8.00 per year, each of which includes the subscription price of the JOURNAL. There are no additional dues for membership in the Junior Bar Conference. Dues for the other Sections are as follows: Administrative Law, $5.00; Antitrust Law, $5.00; Bar Activities, $2.00; Corporation, Banking and Business Law, $5.00; Criminal Law, $2.00; Insurance Law, $5.00; International and Comparative Law, $5.00; Judicial Administration, $3.00; Labor Relations Law, $6.00; Mineral Law, $5.00; Municipal Law, $3.00; Patent, Trade-Mark and Copyright Law, $5.00; Public Utility Law, $3.00; Real Property, Probate and Trust Law, $3.00; Taxation, $6.00.

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Did Blackstone slip?

Perhaps it was natural for Blackstone to omit that body of law governing the family pocketbook. For it was not until almost a century after his death that the basic principle was formulated by a Mr. Micawber in his well-known law of prudence: "Annual income twenty pounds, annual expenditure nineteen nineteen six, result happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery."

Mr. Micawber was right as far as he went but he didn't go far enough. Nor will you, unless you observe the two essential corollary principles, namely:

1. Don't depend solely on your profession for your income. Cross examine yourself: Does practically all of your income derive from your fees or salary?

2. Put some part of every day's income to work to earn more income. What is happening to that portion of your income left over after you've paid for living expenses and made provision for family emergencies? Do you spend this unspent fraction?

Many lawyers are putting money to work to earn extra income from several sources by investing in common stocks or bonds listed on the New York Stock Exchange. They know that while there is risk in ownership of stocks there can also be reward – both in dividends and growth. They want to build not only their present income but their income for retirement. They like the marketability of stocks on the Big Board. And they like the fact that more than 300 stocks listed on the Exchange have paid dividends every year from 25 to 108 years.

We've listed these marathon stocks in a remarkably informative little booklet called "DIVIDENDS OVER THE YEARS," giving their records and grouping them to show which ones earn 5 to 6 percent at recent prices... which are most favored by financial institutions ... which companies have high earnings in relation to dividends paid (sometimes a sign of a "growth" stock) ... and much more, including a description of the convenient Monthly Investment Plan, which enables you to invest regularly, in modest amounts, on a pay-as-you-go basis.

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Views of Our Readers

■ **Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the Journal or otherwise, within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves to itself the right to select the communications which it will publish and to reject others. The Board is not responsible for matters stated or views expressed in any communication.**

Are Lawyers in the Army Too Well Educated To Fight?

■ The recent trial of Sergeant McKeon at Parris Island for the death march, with six casualties, has rekindled in me a deep sense of resentment towards the Army and the manner in which military justice (so-called) is administered in our Armed Forces. I served for almost four years during World War II and spent over a year (toward the latter part of my period of service) in a headquarters Judge Advocate section, doing legal work. I was an enlisted man, and while I made no final decisions, I did process the bulk of the work and made recommendations. I do not think that my experiences were unique—to the contrary, I think that what I saw and heard and participated in was typical of the Armed Forces' complete disregard of the rights of enlisted men and the degrading manner in which human dignity is defiled, all in the name of "discipline"! I participated in many court-martial trials as defense counsel; hence I believe that I am well qualified to speak about the tremendous shortcomings of this farce and travesty on justice.

I have discussed many suggested changes and improvements in the administration of military justice with other lawyers while in the service during World War II, and it was the opinion of many of us that certain definite changes should be made, and the administration of justice placed where it belongs—in the hands of *lawyers,* not a mechanic, or an insurance salesman or a store clerk who happened to be wearing a fancy officer's uniform. Once I was discharged from the service in 1946, I let my reaction to the military service just wither because of (in my opinion) the futility of trying to change or improve an institution like the Army. However, when we read in the newspapers of what went on at Parris Island, and also that there was another staff sergeant (who was given the temporary assignment of keeping the trial room where Sergeant McKeon was being tried clean and swept) who had previously been found guilty of maltreating his men, even to the point of fracturing the jaw of one of his trainees, I begin to realize that one cannot remain complaisant in the light of this evidence of officer abuse of authority—I do not consider these sergeants to be as guilty for their misdeeds as their commissioned officer superiors, because these sergeants would not do the things they have been accused of doing without permission from and approbation of their commissioned officer superiors. AND we do not see the platoon commanders of these sergeants, nor the company commanders, nor the battalion commanders, standing right beside these sergeants as accused—yet these should be, under a properly administered system of military justice.

I have written to members of the American Bar Association's Committee on Military Justice and also of the Committee on Lawyers in the Armed Forces, because I believed that these two committees would be most interested in my thoughts. I have received a mixed reaction to my suggestions, as anticipated.

. . . I know that during World War II we lawyers were the pariahs of the Army, and we were classified for military service along with common laborers—fit for any branch of the service! Men who were doctors, dentists, and even morticians, had national associations which fought tooth-and-nail to protect their professional members, and success crowned their efforts! I remember a fellow corporal who as a civilian was a mortician; overnight a directive came out, making all morticians first lieutenants, because there allegedly was a need for them to inspect meat in the Quartermaster Corps! To top this nonsense, soon thereafter a directive came out, making first lieutenants of medical and pharmaceutical salesmen with a certain minimum number of years' experience, and another corporal whom I knew and served with became a first lieutenant overnight! Just what our American Bar Association was doing to help lawyers in the service, I do not know—but I say: "Let's not permit the same thing to happen in future. Let's protect lawyers, and force the Army to use them properly, particularly since there is so much that lawyers can and should be doing, instead of having legal matters and court-martial trials handled by everyone but lawyers!"

I am almost 44 years old and have no children of my own. Therefore, I have no axe to grind of a personal nature, *vis-a-vis* the Armed Forces. However, when I think of the young men of our nation who must by force of circumstances pass under the control of men like Sergeant McKeon's superiors (this sergeant was merely a pawn in the control of his commissioned officer superiors), where they are abused and kicked around and subjected to human indignities and physical violence, and have no voice with which to speak

(Continued on page 1004)

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Pursuant to the terms of the bequest of Judge Erskine M. Ross, deceased.

INFORMATION FOR CONTESTANTS

Time When Essay Must Be Submitted: On or before April 1, 1957.

Amount of Prize: Two Thousand Seven Hundred Fifty Dollars.

Subject To Be Discussed:

"The Impact of Federal Subsidies on State Functions."

Eligibility:

The contest will be open to all members of the Association in good standing, including new members elected prior to March 1, 1957 (except previous winners, members of the Board of Governors, officers and employees of the Association), who have paid their annual dues to the Association for the current fiscal year in which the essay is to be submitted.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted.

Instructions:

All necessary instructions and complete information with respect to number of words, number of copies, footnotes, citations, and means of identification, may be secured upon request to the

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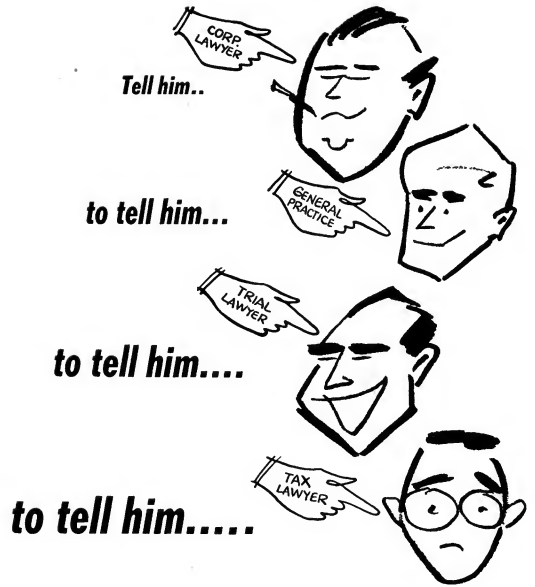

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(Continued from page 1000)

up and complain, and in fact, no one to whom to complain, then I think it is time that we civilians gave the Armed Forces a pretty good shaking-up, and straightened out a few of the sadists in officer uniforms. AND I think that we lawyers can accomplish this objective—or at least start the ball rolling in the right direction.

LEO L. JACQUES
Providence, Rhode Island

The Problems of a Reconciliation Court

▪ Your recent article on the Los Angeles Conciliation Court of Judge Louis H. Burke is interesting and informative. None in our profession can rightfully dispute the end that Judge Burke has in view. However, certain aspects of that article, especially basic assumptions and its consequent procedure are open to dispute. The essence of marriage is a voluntary relationship. The motives to the marital act supposedly spring from a well of emotion which is haphazardly termed "love". If the core of a marriage is emotional in tone, then it seems clear that reconciliation, in theory continuing the marriage, must be based upon mended feeling and understanding.

Behavioral scientists (psychiatrists, psychologists, marriage counselors, etc.), often more wise in domestic matters than the legally minded, have long expounded the doctrines that the best, although not the only, approach to reconciliation is helping the spouses to understand, and perhaps control, the often wild and turbulent emotions. This necessarily implies understanding and dealing with causes and not symptoms. Yet, the "reconciliation agreement", the basic weapon of Judge Burke's procedure, operates on a symptomatic level ("taking each other for granted, temper, separation, other women, etc."). This agreement is formalized and rendered inflexible to the ridiculous degree of a check-list by which each spouse "checks" what he is consciously aware of or feels it is socially permissible to admit. This superficial approach misses the core of the problem—the twisted, hurt, uncontrolled and largely unconscious feelings of the spouse. It seems to me that the reconciliation procedure is not curative but palliative, by substituting for already broken marital vows an agreement that is moral-legalistic in approach, pitched on an intellectual plane, and depends on the coercive powers of the court for enforcement. What this does in effect is to promote the immaturities that rendered the parties incapable of a satisfactory marital adjustment in the first place. It may be that the agreement hinders rather than helps the reconciliation process by putting a couple into a relationship they may neither be capable nor desirous of. This raises an ethical question. Is it not presumptuous of the court

(Continued on page 1006)

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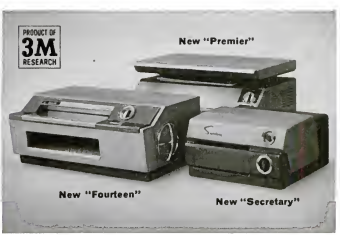

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(Continued from page 1004)

to dictate to this degree the marital conduct of the parties? It is doubtful whether any except those well trained in the behavioral sciences can help spouses to reconcile with any degree of permanency.

My own experience as marriage counselor and attorney suggests that the greater proportion of divorce cases involves the grossly immature, the narcissistic personality, the severely neurotic and actively psychotic personalities. This group is what Judge Burke refers to as the "within cases" and which I term the "emotionally disturbed personalities". It is best by far to leave these persons to others better trained than lawyers or caseworkers. What is left is what Judge Burke calls the "without cases", and which I refer to as the "situational problems" (financial, housing, companionship conflict, etc). Yet, the spouses' inability to deal with these environmental stresses in itself indicates a personality disturbance. Hence, it seems to me that this dichotomy is fallacious. Perhaps, if the personality is not too disturbed and the problem is, as Judge Burke terms "without", lawyers may be effective with their directive-intellectual approach.

Another point, the statistics cited raise more questions than they answer. What portion of dismissals have been spontaneous (without court interference)? How genuine is the reunited bond of matrimony? What insight do the reconciled spouses have into their motives and conduct?

These are but a few of the many points that could be discussed. But space forbids. Mayhap discussion leads to clearer thinking and more effective action in the long neglected field.

OSCAR B. LATIN
Toledo, Ohio

He Dissents from Mr. Baker's Article

■ On page 635 of the July issue of the JOURNAL, Mr. R. C. Baker, in the "umpteenth" attack on the Fifth Amendment, says, in effect, that the most glorious phrase that was ever written is no longer needed because "the frequent employment of torture—to extort incriminating evidence" and "the denial to the defendant . . . of compulsory process to obtain his witnesses" no longer exist.

Did it ever occur to Mr. Baker that if these conditions do not any longer exist here, it is precisely because of the Fifth Amendment? Will someone please tell him that "third degree" methods are still being tried, here and there, even in our own country, and that it is because the courts throw out such evidence that the "cops" do not use it more than they do? Did Mr. Baker ever read in the newspapers how McCarthy, and his kind did, on repeated occasions, smear people while refusing to let them face their witnesses? When a man of his supposed education writes like this for members of the Bar, our freedoms are indeed in danger.

LOUIS NECHO
Philadelphia, Pennsylvania

He Suggests Modifying the Self-Incrimination Privilege

■ I have read with interest the articles in the JOURNAL discussing the Fifth Amendment privilege against self-incrimination.

It is quite apparent that the privilege is being used for illegitimate purposes (and with substantial support from some courts) to the serious prejudice of the security of our country and the integrity of governmental and other public institutions. Its application in many situations is not understood by the public and thus respect for the law and courts is eroded and lost.

Why not expressly provide that the privilege shall be limited to criminal cases in which the defendant is being prosecuted for some offense which is made a crime and then further provide that no testimony or statements made or given

(Continued on page 1008)

(Continued from page 1006)

by the defendant under the compulsion of a subpoena or its equivalent or other lawful compulsion or *while in custody,* except a voluntary confession, shall be received in evidence against the defendant in a criminal prosecution? This would fully protect the citizen from third-degree methods and even unfair interrogation while in custody since admissions against interest or any other statements, short of confession, would be inadmissible. The issue of whether a claimed confession was made and whether voluntary would be for the judge and jury as now.

Thus the citizen would be free at all times and places to testify and answer freely with the knowledge that nothing said could be used against him.

As to the possibility that something he might say outside of court, while not of itself incriminating, might lead to the discovery of incriminating facts, I have never been able to justify the escape from punishment of a person where the facts to prove his guilt beyond a reasonable doubt are available simply because of circumstances under which they came into the possession of the prosecuting authorities.

Immunity from punishment for crime ought to rest on innocence and not on collateral considerations which do not impeach the truth of the proof offered. The presumption of innocence and the requirement of proof of guilt beyond a reasonable doubt are all the safeguards the guilty are entitled to.

The immunity granted by the Federal Constitution was probably intended (as it says) to be limited to "in any criminal case". Mr. Pittman makes a good case for this position in the June issue of the JOURNAL.

If the changes suggested were made it would eliminate the need for immunity statutes which have the undesirable effect in many cases of allowing the guilty to escape prosecution and punishment.

Conviction would result only in those cases where the state could produce in court sufficient proof to convince the jury beyond a reasonable doubt unaided by anything the defendant had ever said at any other time or place (under lawful compulsion) except proof of a lawful confession.

The difficulty of making the changes suggested should not deter the effort as otherwise this well-intentioned privilege of free men may directly contribute to destroy the very freedom it was intended to create and preserve.

CLOYDE B. ELLIS
Judge's Chambers
Eighteenth Judicial District
Beatrice, Nebraska

The Doctrine of Interposition and the Lessons of History

■ The legal argument of Mr. Fagan Dickson, in your September issue, in respect to the segregation cases, is admirably lawyerlike and dispassionate in its approach to this thorny

(Continued on page 1010)

(Continued from page 1008)

problem. It is the more gratifying in that it comes from a Southerner, who might be expected to voice ante-bellum prejudices.

On the contrary, the open defiance of the unanimous decisions of the U. S. Supreme Court on this subject contained in the article by Mr. Crownover ignores the overwhelming current of historical events and judicial decisions that are unpleasing to him and seizes on a few futile defiances of the Supreme Court before the Civil War plus the conflict between Iowa and the Court, when passions overrode judgment, as though these rare defiances could possibly furnish any warrant for nullification of judicial decisions in this year of 1956. Mr. Crownover should move out of the first half of the nineteenth century into the second half of the twentieth century, and become acquainted with it.

To say, as Mr. Crownover does, that the Civil War "did not settle the right. It settled only a question of superior force", assumes that Mr. Crownover and his fellow nullifiers have absolute knowledge of the right, and that the vast number in disagreement with them are wrong and should admit it. Such a declaration further ignores all that has taken place since the Civil War was ended. It, in particular, ignores the adoption by the nation of the Fourteenth Amendment which declares that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." When the Southern states, without exception, voluntarily came back into the Union from which they had sought to secede, and thereafter participated in its executive, legislative and judicial administration of this whole country, they necessarily abandoned all claim of right to nullify the provisions of the Constitution and its amendments, as interpreted by the U. S. Supreme Court.

At this late date, it ill becomes a lawyer to invoke the pronouncements of John C. Calhoun in opposition to the doctrine established by the Supreme Court in 1803 under the leadership of one of the greatest sons of the South, John Marshall, who declared in *Marbury* v. *Madison*, 1 Cranch, 137, 178: "It is, emphatically, the province and the duty of the judicial department to say what the law is." To talk of nullification or interposition (a politer term for the same thing) is to ignore the teachings of history and the general acquiescence of the whole people of these United States, since the adoption of the Fourteenth Amendment that, when the Supreme Court has interpreted our Federal Constitution, its interpretation becomes the supreme law of this land.

As lawyers who have each and all of us taken an oath to support and defend the Constitution and the laws of the United States and of our state, it is especially incumbent on us to support decisions that we do not like as well as those that give us satisfaction.

BENJAMIN H. KIZER
Spokane, Washington

More on the Public Defender

■ I have been following breathlessly the raging storm of comment in your recent issues of the public defender system.

I would like to add my voice to the current in favor of such an obviously necessary department in the many-mansioned house of justice. It is perfectly clear that blind justice is as purely jealous of innocence as guilt.

The astute observation of Mr. Grunewald in the August number that lawyers, as a class, should no more be required to bear the cross of the indigent in this sphere than grocers, as a class, should be respon-

(Continued on page 1012)

(Continued from page 1010)

sible for the hungry there, is a masterpiece of inductive reasoning.

I would also like to express my appreciation to the author of the piece on the court of reconciliation in the July issue. His style is matchless and his argument powerful. Your JOURNAL is serving a most useful purpose by affording a forum for the expression of current ideas and is contributing to the overall pursuit of justice.

JACK F. MCGUINN
Columbia, South Carolina

Admission to Practice in the Federal Courts

■ I have read with great interest the article in the August issue of the JOURNAL by Hugh P. Williamson concerning the disparate rules of admission in federal courts. As an attorney admitted to practice before all the courts of the State of New York, the Eastern and Southern Districts of New York, the Circuit Court for the Second Circuit, and the United States Supreme Court, I particularly appreciate the disparity.

I firmly believe that the following rules should be uniformly adopted to govern admission before the federal courts:

1. Any attorney admitted to practice before the United States Supreme Court should be admitted to practice before any Federal Court on filing a certificate of good standing from the Supreme Court, an oath, and paying the requisite fee.

2. Any attorney admitted to practice before any United States Circuit Court of Appeals should be admitted to practice before any District Court in such Circuit upon filing a certificate of good standing from the Circuit Court, the oath, and the requisite fees.

GEORGE NIMS RAYBIN
New York, New York

He Likes Our Covers

■ The portraits on the front pages are a happy and welcome addition to the magazine which convey to the reader an impression that he is a part of a notable company.

Please extend to the Editor my cordial congratulations on the interesting improvement in the appearance of the publication. The format, typography and pagination with the balanced make-up reflect the stable character of the Association. . . .

E. ALLEN FROST
Evanston, Illinois

The Rule of Law:

Its Status in the Modern World

by Sir Reginald Edward Manningham-Buller, Q.C., M.P. • *Attorney General of England*

▪ Sir Reginald, one of the distinguished speakers at the 79th Annual Meeting of the Association in Dallas, Texas, last August, addressed the Assembly of the American Bar Association on Wednesday afternoon, August 29. His addresss is printed in full on these pages.

▪ My intention today is to submit for your consideration some reflections on the rule of law in the modern world, reflections which have occurred to a practicing lawyer whose daily work brings him into the most intimate contact with the business of government and the administration of justice. I speak to you not as a member of the British Government, not as a member of Parliament, but just as a fellow lawyer. It is not my intention or desire to make anything in the nature of a political speech or to comment on the present serious international situation.

I venture to speak to you not without some trepidation, for it is indeed a formidable task to address a body such as this. I am however comforted to some extent by the knowledge that we share in one respect a common monarch. Please do not think that I am displaying an entire forgetfulness of the history of the last 200 years or that I am announcing that Great Britain has become the forty-ninth state. It is merely that I call to mind the words of Tom Paine that will be familiar to you:

> But where, say some, is the King of America? Yet that we may not appear to be defective even in earthly honours, let a day be solemnly set apart for proclaiming the Charter, let it be brought forth placed in the Divine law, the word of God, let a Crown be placed thereon by which the world may know, that so far as we approve of monarchy that in America the law is King.

These are perhaps the days solemnly set apart for recognition of that fact.

Now let us look at the position in my country. You will remember that in the days of the Stuarts the King claimed to be the sole repository of the law, and it was asserted that the judges were but the delegates of the King. You will remember the struggle that took place over that and you may know that in that struggle my great ancestor, Sir Edward Coke, Attorney General in the days of the first Queen Elizabeth and Chief Justice in the reign of James I, played a not inconsiderable part. In his Report you will find the following incident recorded. It happened in the year 1608. This is what Coke wrote:

> A controversy of land between parties was heard by the King, and sentence, given, which was repealed for this, that it did belong to the Common Law: then the King said, that he thought the law was founded upon reason, and that he and others had reason, as well as the Judges: to which it was answered by me, that true it was, that God had endowed His Majesty with excellent science, and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of law, which law is an act which requires long study and experience before that a man can attain to the cognizance of it; that the law was the golden met-wand and measure to try the causes of the subjects; and which protected His Majesty in safety and peace; with which the King was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith quod Rex non debet esse sub homine sed sub Deo et lege—The King himself ought not to be subject to man but to God and to the law.

It was not so very long after the King was so greatly offended that he dismissed Coke from the Chief Justiceship, but since the days of Coke in England the rule of law has prevailed.

In both our countries the rule of law prevails. Long may it continue to do so.

The Rule of Law . . .
A Classical Definition

What do we mean by the phrase "the rule of law"? The older common lawyer when that is mentioned usually thinks of Dicey and his classical work, *Introduction to the Study of the Law of the Constitution*. He said that "rule of law" formed a fundamental principle of the British constitution and had three meanings or may be regarded from three different points of view; that it meant in the first place the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excluded the existence of arbitrariness, of prerogative or even of wide discretionary authority on the part of the government; secondly, that it meant *equality* before the law or the equal subjection of all classes to the ordinary law of the land; and lastly that it might be used as a formula for expressing the fact that with us the law of the constitution *is not the source but the consequence* of the rights of individuals as defined and enforced by the courts.

This interpretation has been much criticized in recent years by eminent constitutional lawyers, Sir Ivor Jennings, Professor Friedman, Professor Wade and others. But let us not assume that because like other profound concepts it is not easy to define, it has no reality and no importance.

I am not sufficiently bold to attempt a definition, but despite the criticism of Dicey's interpretation, it does I think primarily signify to most of us the reverse of tyranny. In democratic society as Professor Friedmann says, most people understand by "rule of law" a state of affairs in which there are legal barriers to governmental arbitrariness and legal safeguards for the protection of the individual. Where the rule of law does not reign—and it does not reign in many parts of the world today—it is replaced by the rule of fear or anarchy.

The rule of law is one of the main buttresses of democratic society. Where it exists, you will find justice, regard for individual liberty, legal protection from arbitrary arrest, freedom of the person and freedom of the mind.

Where it does not exist, one may expect to find, to use the words of Thomas Hobbes, "the life of man solitary, poore, nasty brutish and short".

The Rule of Law . . .
No Certain Permanence

As I have said, in both our countries the rule of law prevails but it would be foolish to assume that it is bound always to do so. It may be that it is more safely enshrined where you have a written and not an unwritten constitution. Even if that be the case, it does not follow that the rule of law will necessarily forever endure.

When Dicey first published his analysis of the rule of law in 1885, the England the Empire that he knew stood at the very summit of its prosperity and power. Many of the great reforms which underlie the modern welfare state lay still twenty years and more ahead. The progress of socialism, or "collectivism" as he preferred to call it, had by then, as he said later, "hardly arrested attention". His view, if I may so put it, was confidently extrovert.

Thirty years later in 1914, on the eve of the first Great War, when he came to write the Introduction to the ninth edition of his great work, the landscape, though still largely bathed in sunshine, was already changing beneath his eyes. The social and technological revolution which was to transform the features of our world was already under way. With what anxiety then did Dicey sense the shape of things to come. He wrote of the "Singular decline among modern Englishmen in their respect or reverence for the rule of law"; of a distrust of both law and judges; of a trend in legislation to give quasi-judicial authority to officials; of an extension of the sphere of the state's activity leading to the state's more and more undertaking a mass of business from which the jurisdiction of the courts was inevitably excluded; and following the Trades Dispute Act of 1906, of the growth of extraordinary immunities conferred on combinations of employers and workmen.

It may well be that Dicey's reaction in 1914 was partly the puzzled confrontation of a nineteenth century Whig with a new order and a new century which he could not fully understand. And yet I wonder as we view the scene in 1956 whether he did not appreciate the prospect better than it is perhaps fashionable for the perplexed and diffident post-Diceyan lawyers to admit. In his lifetime Dicey saw a great diminution in the respect or reverence for the rule of law. Has not that tendency continued? As the sphere of governmental activity has increased, have we not seen a corresponding diminution of the rule of law—and regard for the rule of law?

During the last war we in Great Britain willingly submitted to a host of orders, regulations and controls, restricting individual liberties and freedoms. That was part of the price of victory. Those orders and regulations made laws binding on the population, yet it was difficult for the ordinary man, indeed for the lawyer too, to know what the laws were, what was forbidden and what permitted. Access to the mass of documents embodying these laws was not easy. To ascertain what the law was at a particular moment in relation to a particular matter affected by these orders was often a Herculean task, involving tracing through a labyrinth of orders, amending orders and further amending orders. *Ignorantia legis non excusat;* yet the ordinary man could not know and really could not be expected to know the content of this mass of orders and regulations. When punished and perhaps severely punished for an offense created by them, for doing something which he did not recognize as morally wrong, he was apt to feel very considerable resentment and to feel that the law was indeed "a ass". This led to less respect for the rule of law.

Sir Reginald Edward Manningham-Buller

These orders and regulations were made in the exercise of powers delegated by Parliament. The signature of a Minister and sometimes of a senior civil servant alone sufficed to give what was embodied in a document the force of law. Only a small fraction of these orders and regulations were the subject of debate and discussion in Parliament. Even if they were discussed, Parliament could not amend them; they had either to be accepted or rejected *in toto* and the chances of the rejection by the House of Commons of an order made by the Government with a majority of Government supporters in the Commons was infinitesimal. The most one could hope for was that by drawing attention to a defect, the administrators might be persuaded to introduce an amending order.

What a convenient system this was for the administrators. No delay as a result of having to go through the normal legislative process, provided that it was within the powers delegated, no risk of successful challenge in the courts.

Of this streamlined legislative machinery great use was made in the immediate post-war years. We saw the jurisdiction of the courts ousted or limited in a number of fields. New tribunals were created, removed to a very large degree from control by the courts. Orders were made, indeed provisions were inserted in statutes giving ministers powers to act if it appeared to them that a certain state of affairs existed. Whether it did so appear to them was not a justiciable issue.

Since 1951 a very considerable change has taken place. We have got rid of a large number of these Orders and Regulations. Some have been replaced by statutory provisions which have been subjected to the close scrutiny of Parliament. Others, like those relating to the carrying of identity cards, have gone completely. Of those that remain, those found valuable will I hope in due course be replaced by statute, and most of the remainder scrapped. There must of course be some delegated legislation but it should be limited in ordinary times to filling in the details of laws passed by Parliament.

There has since 1951 been a very significant and salutary change of outlook. Any provision in a bill conferring power on a minister to make orders is closely scrutinized in Parliament. A strong case has to be made out for the powers and members of Parliament on both sides of the House are vigilant to see that the exercise of those powers remains subject to Parliamentary control.

The Courts are certainly no less vigilant to protect the rights of individuals against abuse of power by officials and others. They have managed to exercise some control over what are now generally called administrative tribunals. Much has already been done towards ensuring that decisions of such tribunals on points of law are subject to review by the established courts of justice. The whole aspect of these administrative tribunals is now under examination by a strong committee headed by an old friend of yours, Sir Oliver Franks.

We have in Great Britain in recent years seen a revulsion of feeling in favor of the rule of law, a new realization of its importance and a renewed determination to maintain it.

I have mentioned these matters—and I hope that I have not wearied you in doing so, for I think they illustrate that one should not assume the continued existence in the modern world of the rule of law and also the necessity for perpetual vigilance to secure its preservation.

This renewed realization of the importance of the rule of law is not of course confined to Britain. Last year you will remember the International Commission of Jurists convened a congress at Athens of a hundred leading jurists from forty-eight countries. Their task was "to consider what minimum safeguards are necessary to ensure the use of the Rule of Law and the protection of individuals against arbitrary action of the State". They passed a resolution, now known as the Act of Athens, declaring that "the Rule of Law . . . springs from the rights

of individuals developed through history in the age old struggle of mankind for freedom: which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all". In that short sentence a very great deal is comprehended.

We lawyers are perhaps apt to be skeptical about such sweeping assertions of human rights as are contained in the United Nations Charter, the Declaration and Covenant on Human Rights and the European Convention on Human Rights. But while we may disagree as to the extent of a particular right, we should, I think, agree with the International Commission of Jurists that a special responsibility rests on lawyers to see that the legal guarantees of human rights in national systems of law do in their total effect protect and enhance the dignity and worth of the human person. We lawyers all know and recognize our duty to our clients. We have an important duty to the public too. No matter what our views may be on particular political matters, it is for us to recognize and to resist any attack on the fundamental principles underlying the rule of law; for the maintenance of the rule of law is indeed one of the cornerstones of modern democratic society.

Not infrequently when a proposal is put forward to give new discretionary powers to administrators, free from control by the courts, it is contended that the grant of such powers is "in the public interest" or "in the interests of the workers" or is justified by "state necessity". This is no new thing. In a little book published in 1819 I came across the following quotations from a poem:

> Of those great men who clothe their private hate,
> In the fair colours of the public good;
> And to effect their ends pretend the state,
> As if the State by their affections stood.

The use of such expressions usually means that the grant of powers free from control by the courts will be very convenient for administration but it should be remembered that the public interest in good administration is seldom, if ever, greater than the public interest in the rule of law. Such pretexts when put forward warrant the closest examination. In totalitarian countries, they have been used to destroy individual rights. It is I think particularly the duty of lawyers in democratic countries to expose as best we can the falsity of such pretexts when it exists.

I am not asserting that we lawyers should go so far as to contend that all decisions on policy, all administrative acts should be subject to judicial procedure and examination. That would be going far too far and if we put forward any such contention we should expose ourselves to the jibe that what we really care about is rule by lawyers and not the rule of law. If every decision of policy, if every administrative act had to be or might be subjected to prolonged judicial inquiry, it would indeed be difficult if not impossible to carry on the business of government efficiently. When a government has decided on a particular policy, whether it be to institute a National Health Service, build a new town or make a new motorway, it must often be most annoying and irritating to those charged with the duty of carrying out that policy as quickly as possible, to find themselves delayed, held up it may be for months, by lawyers protecting the interest of individual clients. That should not, however, lead to demands for power to ride roughshod over individual rights, but only for acceleration of the procedure whereby the objections of individuals can be speedily investigated and determined.

It is of course vitally important that the legal systems of nations where the rule of law prevails should make it possible to bring to the Bar of Justice those who have acted in excess of the powers conferred upon them or otherwise illegally. A country may have the best laws in the whole world, but that is of no consequence unless those laws can be and are enforced. A criminal code, however good, is of no value without a police force.

Indeed, if sanctions do not exist, it can be said that the rule of law does not.

So far I have spoken of the rule of law in the domestic national field. I now want to say a little in relation to it in the international field where it is at least as, if not even more, important. Where the rule of law does not prevail within a country, it is hardly likely that that country will have much regard for the rule of law in the international field or for international obligations. If there is one thing on which there is complete unanimity of opinion among the freedom-loving nations of the West, it is in our hatred of war and of the use of force. It is our hope and our belief that the time may come when all international disputes can be settled and disposed of without the use of force just as in a civilized community a dispute between individuals can be resolved without the use of violence—and if violence is used it is punished.

The fundamental difficulty about the rule of law in the international field is the absence of sanctions other than that of force to enforce compliance with it. In this century we have seen a very considerable and most regrettable disregard of international law. After each great war we have seen valiant efforts made to devise machinery whereby the use of force by nations can be avoided. First we had the League of Nations: now we have the United Nations. We have an international court. But we have seen that it is possible to flout with impunity a resolution of the United Nations and to ignore a decision of the international court. Where a resolution of the United Nations is disregarded or a decision of the international court rejected, really the only effective sanction whereby the will of the United Nations can be imposed or

(Continued on page 1090)

As Between Friends:

The Common Law Man

by Sir Edwin Savory Herbert, K.B.E. · ***President of the Law Society of England***

■ **This is the address delivered by Sir Edwin on the afternoon of Thursday, August 30, to the Assembly of the American Bar Association during its 79th Annual Meeting in Dallas. The address was given before a capacity crowd in the Main Ballroom of the Statler Hilton under the title "As Between Friends".**

■ You all know the cautious lawyer who draws his pleadings in such a way that when he comes to trial he will have freedom of action with no issue closed—like the man who denied that his client was the father of the said twins or either of them. That was my state of mind when I was asked to give the title of my address today. I did not then know quite what I might want to say and I wanted to keep for myself full freedom of action. So I needed a title which would allow me to say anything without being called to order for irrelevance.

But two things I knew. I knew that among friends one may say anything. And I knew that here I should be among friends for, believe me, ladies and gentlemen, I am no stranger to your country or to your way of life. I have been here many times and whenever I come here I find friends. I say this from a wide experience of American people in various walks of life.

I first came here nearly forty years ago as a seaman in the British Navy. I landed in New York on a hot August afternoon. That was my first glimpse of your country. I was assigned for a week to help train American signalmen in the signals procedure we had in the convoys in those critical days of World War I. When I am in a tight spot I often find it comfortable to recall that I once survived a week as a limey in the Brooklyn Naval Yard. In those days the streets of New York between the two rivers and Fifth Avenue were pretty rough places. Neither the East Side highway nor the West Side highway had been built. My mother was very much concerned about the perils to which I was exposed, the perils of the sea and the perils of the King's enemies. Had she known the sort of company I was keeping and the sort of places I was in, she would have been more anxious perhaps about other perils. But I saw a lot of life then and I learned many things then that have stood me in good stead since.

During World War II, the war job I was doing brought me frequently here and amongst other things it thrust me into the interdepartmental strife of Washington, the sort of subsidiary warfare which springs up in wartime in every center of government. I came to that experience armed with what I had learned in the tougher streets of New York. To that knowledge I had carefully added a study of Lord Bryce's great work on the American Constitution and some of Mr. Geoffrey Gorer's researches into the character of the American people. My supplementary studies were not needed. What I had learned in the New York of World War I was really all I needed. So, in World War II also I met all sorts of conditions of men.

I recall two highlights of that experience. I remember an occasion when for some reason or other which I cannot now explain, I found myself on my feet after lunch without previous warning addressing the Foreign Relations Committee of the Senate, with two high-ranking officials of the State Department looking on to see fair play. That was a rather shattering, but a very rewarding and educative experience. I recall another occasion when I had to attend a meeting of the Combined Chiefs of Staff for the purpose of explaining to them the latest form of secret communication which the enemy had devised and my department had uncovered. I have the happiest recollection of seeing them all round the table the whole of one afternoon goggling down microscopes like a lot of school boys. General Marshall was there and Admiral King and Gen-

eral Bedell Smith and also of course our own Sir John Dill, that great friend of both countries, whose bones lie in Arlington alongside those of your own honored dead. If you want to know what I was showing them, you have only to look at that glass case in the anteroom of Mr. J. Edgar Hoover's office in the Federal Bureau of Investigation and there you will see it all displayed to public gaze.

I recall a more recent visit when I was asked to assist in advising the United Nations upon how they should handle the very difficult and delicate question of the attitude of their staff in loyalty matters. There I had the great good fortune to have as a colleague, Mr. William D. Mitchell, alas no longer with us, a great lawyer and a great gentleman if ever there was one.

I could go on boring you with recollections of incidents drawn from many journeys and meetings with many people in the worlds of the law, business and government, but I have one confession to make. I have never until this week set foot in Texas. That is not to say that I have not met Texans. You do not have to go to Texas to meet Texans, any more than you have to go to Scotland to meet Scots. Wherever you go in any part of the world where there is adventure to be had or money to be made you will always find Scots and Texans. I can recall many encounters with Texans. I have listened to so many of their stories as tall and as long as their drinks. But I recall one particular incident with a Texan, short and to the point, which I can never forget. I was down on an oilfield in Latin America, where an English company of which I am chairman, is in partnership with one of your great oil corporations. The manager was a Texan about 6'6" high and broad in body and mind to match. We had had a trying day. There had been a dispute amongst the geologists which had been as hot as the day. We had all been trying to do what we could to smooth matters over and reach agreement, but there had been no success and at midnight the struggle still went on.

Our friend Bill had restrained himself all day, but at last he could stand it no more and he broke out, "I guess we had better do what those boys did in Texas". And then he told the story you probably all know of how two men going to drill a well down here got tired of the long journey and decided that they would drill in a field where an old mule was lying. So they dug the old mule in the ribs, made him get up and spudded their well there. It was the discovery well of a successful oilfield. "Hell," said Bill, "we don't want geologists, we want a mule." You can imagine that a ghastly silence followed. I was foolish enough to break it. I said "Well, Bill, I hope they did something for the old mule." Without a moment's hesitation came the answer: "Sure, they made him chairman of the company." I may say that from that moment the field has never looked back, and Bill and I have remained fast friends.

A Common Ground . . . *England and America*

I could add to experiences of America and Americans meetings with men of diverse races in many other parts of the world, at home in England, and in many of Her Majesty's dominions beyond the seas, meetings which have brought me into touch with people of the most diverse occupations and characters and outlooks. And yet, in all those places, and with all those people I have felt myself at home. In the background of our converse there has been something upon which we could find common ground, and find common ground instinctively without consciously searching for it, common ground which is there embedded in our experience, our environment, and almost one might say in our personality.

I have pondered long upon this and wondered why it should be so. I believe I have found the answer. I shall suggest to you the answer because it is the real theme of what I want to say to you today. Take any one of these men: from the great political and military leaders in Washington, the oilfield manager, leaders of our own profession, and so on through Government officials, businessmen, and many other people of all sorts. Scratch any one of them and what do you find under the skin? I suggest, gentlemen, that what you find under the skin is the *liber et legalis homo* of the common law—the free and responsible man, whose character sustains and shapes the law and whose freedom and responsibility it is the function of the law to sustain and fortify.

We should take a look at this free and responsible man, for he is an important person. In spite of the mass of legislation which afflicts your country and mine, the basic rights and duties that govern human relations depend not on legislative enactments, but on the sort of reaction you can expect from him. So one needs to ask what sort of a man is he? For it is his character that colors and gives to the common law its peculiar character.

On examination this extraordinary person turns out to be a very ordinary person. He is not a saint, but he is certainly not a rascal. He is not a hero, but he is not a coward. He is a solid citizen but he is not too bright and good for human nature's daily food. He is expected to behave reasonably, but under a reasonable degree of provocation it is reasonable to expect him to forget reason and act in passion. He is insistent on his own rights, but he is diligent too in the performance of his duties. Indeed, he thinks of his duties largely in terms of what one free and responsible man should be expected to do or forbear towards another free and responsible man. He thinks of himself as a member of a free but ordered society. He believes that he has a duty to God which is reflected in his duty to his fellow men though wild horses would not drag such an admission from him.

The common law is something that reflects the nature and character of the ordinary man, the conduct required by the common law is the

sort of conduct one might reasonably expect from such a decent man. It is not and never has been a code of rules imposed from above for the purpose of reforming or improving or protecting the ordinary man. The presumption of the modern bureaucrat, the gentleman from Whitehall, as we call him in England, who knows how every man, woman and child should behave far better than they do themselves, is a thing repugnant to the common law. The ordinary person's dislike of being "bossed about" is not due to some abstract belief in freedom but to the fact that common law is as pervasive as the air we breathe. Anything unreasonable or authoritarian taints the air, and we who live under the common law feel ill at ease as though we were suffering from some mild poisoning. The truth is that the growth of the common law has been more a process of education than anything else, and that education is more the kind of education you get in a family at home than the kind you get at school. It is a matter of growing up into a way of life developed and refined from generation to generation. It is like being moulded by, living under and handing on a family tradition, a tradition that lives and grows and changes and yet remains unmistakably itself. To my mind there is no doubt at all that it is this life under the law that gives that unity, that sense of neighborliness that has so far carried both you and us through so many periods of stress and danger. It is this most precious heritage, this living, growing thing, this noble contribution to the life of the world, we lawyers have to sustain and defend. God forbid that we should ever forget it or take it for granted. God forbid that we should ever let the complications and intricacies of what we at home call "the welfare state", with its paraphernalia of acts of Parliament and statutory regulations, overlay or suffocate the free spirit of the common law.

There are other things we need to remember about our common law man. He believes in, he is loyal to the state, because he sees in it the outward and visible sign of the ordered society to which he is responsible, to whose vitality his freedom contributes and from which his freedom in turn draws strength. But he utterly repudiates the idea that his rights derive from the state.

Sir Edwin Savory Herbert

Human Freedom . . . *A God-Given Right*

A man is "free". Why? Because some other man allows him liberty of action? Because he is useful to the state? Because the state guarantees him something in return for services rendered? Because he is socially desirable? Because he is approved by the majority? Because he pays his taxes and keeps up his insurance contributions? No, for none of these reasons, but simply because he is a human being, and being that he has within him the sacred spark of a life divine. Therefore, says the common law, you must never use him as a means to an end, you must respect him as a person, you must never use him as you would a thing. A man is never to be the creature of sovereign or state. A man is free because he is a man and not because he is a citizen. He is by nature, by reason of his divine creation, a *liber homo*. Because he is free, the development of his life and powers is in his own hand, he is responsible, that is to say he is self-controlled. Is it not for this very reason that we English and American people hate in our souls the Nazi or Communist technique of conditioning people? That is to apply to the *liber homo* methods that may be appropriate to training a dog or a horse, even my dear old mule, but which are a denial of the nature of a man. No, to train a man you must gain his consent, and, says the common law, you must do it by appealing to his reason and responsibility. Because he is free he is responsible and he is responsible because he is free. Your *liber homo* must by his nature be also a *legalis homo*. The common law does not confer a series of freedoms, it assumes that a man is free and then says that certain actions, assault, battery, defamation, trespass, negligence and so on, are such obvious abridg-

ments of a man's freedom that no reasonable free man would inflict them on another. Therefore you owe me a duty not to do these things, a duty I can if necessary enforce in the courts. Rights at common law are the consequences of duties. I carry within me as a man an inexhaustible fund of freedom from which I can never be parted and to which the state cannot add. My common law rights are no more than the means available to me of enforcing your duty to respect my freedom and your rights against me depend on my duties to you.

We must remember too that just as our common law man does not derive his rights from the state, so also he does not derive his power merely from being in a majority. He is reasonable, he is neighborly, he is a member of society, he is a citizen, but above all he is an individual. He seeks to find justice in something inherent in itself and not simply in the will of a majority.

What makes a law just? Is it the will of a ruler, or the safety of the state, or the interest of a ruling class, or the inclination of a party with a majority of votes in the country or in the legislature? Each of these answers has been from time to time accepted in one country or another. Maybe the last, the inclination of a majority, is our rough working answer in my own country today. The voice of the people is the voice of God; a majority voice is the voice of the people; therefore the law is just, because the people want it, or are said by their managers to want it. I speak of my own country; I do not doubt that you conduct your own politics on a higher and nobler level. We have to learn that this so-called "democratic" idea is capable of becoming at least as heavy a tyranny as the rule of kings, or aristocrats, or dictators, and that in some totalitarian countries this conception of a fleeting majority's will as being in itself just, has been the means of establishing the tyranny. We all hated the tyranny of Hitler. Let us not forget that he obtained a majority in the Reichstag by constitutional means and relied upon a majority throughout. It was his treatment of minorities that was shocking to us. Was that treatment just because they were minorities? Have Jews no rights because they are few? Should you have the right to persecute Christians because most people do not go to church? Of course we will all answer no. If we do, we must remember that we are rejecting, as the common law man rejects, the will of the majority as the final criterion and admitting that for a law to be just it must be judged by some other standard; that the majority ought not to use its power unjustly. In other words, perhaps to our surprise, we find ourselves in the realm of morals.

So to our list of the qualities of our common law man we have to add moral qualities and the belief that justice derives from something more absolute than expediency or self-interest or party.

Finally we must admit that so far as the common law man is concerned, words importing the masculine gender do not include the feminine also. There is no such thing at common law as the reasonable woman. This is not because the common law man is a misogynist; far from it, he is very much akin to *l'homme moyen sensual*. But he is full of common sense and he knows well that if women were of reason all compact, he would have little chance of finding a wife. So he ranks together infants, lunatics and married women, to whom my witty namesake, A. P. Herbert, would add cattle demenent, a point I wish the late lamented Ephraim Tutt had lived to argue. So marriage continues and the race of man goes on thanks to the steadfast refusal of the common law to insist on a form of sex equality which would result in a Rule against Perpetuities more stringent than any devised by any court of equity.

The Civil Law Man . . . *A Near Relative*

I have been speaking as a common lawyer to common lawyers. But I remember that there must be many among you from states whose legal systems have developed out of another tradition—the tradition of the civil law. Gentlemen of the civil law, the common law man salutes you as a close relation. I had it on the tip of my tongue to say as a cousin. But that will not do; I shall call you uncle. For you are of an older generation. You grew up and flourished in the clear light of the Mediterranean while we were still sheltering in our primitive caves against the damp dull mists of the Western Seas. Indeed it was not until you came to England and settled in Oxford that we were stimulated into self-consciousness and began to systematize our laws. In the process the Inns of Court came into being, institutions that through the ages have produced the finest flowers of the common law, many of whom are common to both our countries, and others of whom, like the Attorney General, you have welcomed at your conferences.

Let me admit at once that between the common law man and the man of the civil law there are great differences of outlook. They are great enough to make understanding between uncle and nephew difficult.

After all, the older man was brought up in a country of clear skies where natural objects stand out in bold relief, where boundaries, the edges of things, are sharply defined. There are no half tones. Light is bright and shade is dark. The younger man was brought up in a country of short horizons, of mist and cloud, where the edges of things are often blurred with atmospheric softening. I am sure that men's ways of thought are affected by their climatic environment, and it has certainly been so in their thoughts about law. Your civil lawyer likes to look to a wide horizon. He likes to take great sweeps of theory. Your common lawyer prefers to look no further beyond his nose than he must. He prefers to answer practical questions in a practical way and when he hears the word theory, it has the same effect as the word

(*Continued on page 1093*)

Canadians and Americans:

How They Are Different From One Another

by Paul P. Hutchison, E.D., Q.C., LL.D., D.C.L. • *President of The Canadian Bar Association*

■ It has become a tradition—and it is a fine tradition—that the President of The Canadian Bar Association should be one of the distinguished guests at the Association's Annual Meeting. The President this year was doubly welcome, since he is the grand-nephew of a former President of the American Bar Association. Colonel Hutchison addressed the second session of the Assembly during the 79th Annual Meeting in Dallas last August. His address is published here in full.

■ Because of my personal background, this is a unique occasion for me. My paternal ancestors were Highland Scots who crossed the Atlantic very shortly after the British conquest of Canada. On my maternal side, however, I am English-American. My mother's family, whose Phelps name I bear, came from England in 1630 to settle in Massachusetts Bay Colony. Beginning with the original settler, down the centuries since, there has been a continuous stream of American judges and lawyers in her family. My grandfather was a lawyer qualified to practice in several of your states. His eldest brother, Edward J. Phelps, was one of your great advocates, your Ambassador to the United Kingdom and the third President of the American Bar Association. One wonders what would pass through his mind could he be with us today. He would see how your great Association has grown. But I imagine he would be even more startled to find his grand-nephew here to address you as President of a Canadian Bar Association, founded after his day as a result of the encouragement of his Association. But I think he would consider it appropriate that I should speak to you in the Lone Star State. For he would recall his older contemporary and cousin, who had also been a Minister to England, but from Texas, my distant kinsman, Captain Henry Austin.

When I went overseas during World War I with a Canadian battalion of The Black Watch we were eleven hundred strong, wearing the historic kilt of our Scottish ancestors, but of our thirty-five officers, seven had American mothers. This is not a too unusual situation in my country. Not only have we Canadians and you Americans close ties of friendship, but also those of blood relationship. It is as such a Canadian that I speak to you today.

Our open frontier has been an example to the world and our similarities and our friendly relations have been a theme chosen by many speakers in both our countries. But what I am going to emphasize today is not our similarities and our friendly relations, but our differences and our friendly relations. And, while it may sound a paradox, I believe that fundamentally these differences are the life blood of our relationship and must be nurtured.

To understand these differences we must go back and view them in the perspective of our past history and in the light of our political institutions and of Canada's rapid economic development during the past twenty-five years.

It probably is strange and surprising to many Americans that Canada has remained a part of the British Commonwealth of Nations. Perhaps this is because it is not generally understood that the only remaining tie between England and Canada is that of choice on our part. This in itself may seem strange to an American, but perhaps the initial difference between Canada and the United States is that Britain never exacted any taxes from us. It may well be that Britain was too busy trying to collect taxes from you Americans across the border to have time for us. Be that as it may, we have never paid taxes to Britain. In fact it was the British taxpayer who paid for our protection and British troops who protected us. To Canadians therefore the hated Redcoats of

your school history books became protectors rather than feared oppressors. In 1950 our Minister of Justice stressed this fact at Washington when he said:

> Canada during most of her early history was defended by British troops and was protected, as well as all free nations, by the British fleet, paid for by the British taxpayer.

British Loyalists . . . *English and French*

In looking back on our respective histories it must not be forgotten that not all the English colonists of 1776 rebelled. Thousands then decided to remain British and came north to settle our provinces of New Brunswick and Ontario. They were known as United Empire Loyalists and were granted the right to use the initials U.E.L. after their family names.

In the early history of Canada it was not only English-speaking Canadians and U. E. Loyalists but also the recently conquered French who decided to remain British. This was so, notwithstanding the bitterness aroused by the deportation of Evangeline and her fellow Acadians (the "Cajuns" of Louisiana) from the eastern British Colony of New Scotland. On the surface this seems astounding, but the French Revolution was still some years in the future and under the old French Regime in Canada there had been little personal liberty. In a few years a conquered people had come to appreciate the meaning of personal liberty under British rule. Consequently, when in 1775, only fifteen years after the British conquest of Canada, an American army set out to "liberate" the French in Canada they found that the French did not want to be liberated. At that time Montreal was occupied by an American army and Quebec City was invested by another. Montreal was governed then for some months by an American commission, headed by Benjamin Franklin. Very recently the Congress of the United States of America presented one of its Franklin Commemorative Medals to the *Gazette*, a Montreal morning newspaper which Benjamin Franklin was instrumental in founding during his stay in Montreal.

Why were Franklin, Samuel Chase and Charles Carroll of Carrollton unsuccessful in this attempted conquest of liberation? Causes are always multiple and intertwined, but one main reason undoubtedly is that Britain permitted the French population in Canada to retain its own language, religion and civil laws.

That this Canadian unity under British rule stood on solid ground was manifested again during the War of 1812, when the English Canadians at Queenston Heights in Upper Canada and the French Canadians at Chateauguay in Lower Canada checked the advancing American armies who still cherished the hope of liberating Canada and joining it to your great nation.

In time "liberating" Canada died out but "Manifest Destiny" came to take its place. After the War Between the States it was said in Congress that the intention of nature was to include the whole North American continent in the magic circle of American Union—it was "manifest destiny" that the United States should take over Canada. Again—not so long ago—a member of your Congress rose in the Senate to suggest that the United States take over Canada, turning each of its provinces into a state of the Union. You and we realize how silly that suggestion was—if only because Texas would never consent to become merely the fourth largest state! Probably few Americans, or Canadians either for that matter, realize that in fact our Province of Quebec is more than twice the size of Texas and that each of our Provinces of British Columbia and Ontario contains almost one hundred thousand more square miles.[1]

Many Similarities . . . *Significant Differences*

Canadians and Americans are of course very similar in many ways. We are both North Americans, with a way of life different from the European way or the South American way or that of other parts of the world. We have much the same ideals, ambitions, standards of education and of justice. As our Canadian Ambassador to the U.S.A. said earlier this year:

> The objectives of the United States and Canada, the major ideals of the American and Canadian peoples—the great essentials—these by tradition and by choice are the same both sides of the border and, please God, will remain so.

Our respective laws are similar in principle even if they differ in detail. For we have a common heritage which we both call "liberty under law". Moreover, English is our common tongue, but not entirely so. To a third of all Canadians the mother tongue is French, and Montreal is, after Paris, the largest French-speaking city in the world. In Canada there are many English-Canadians and French-Canadians who constantly speak both French and English. Indeed in my province, all of us lawyers must do so, if we are to represent our clients properly.

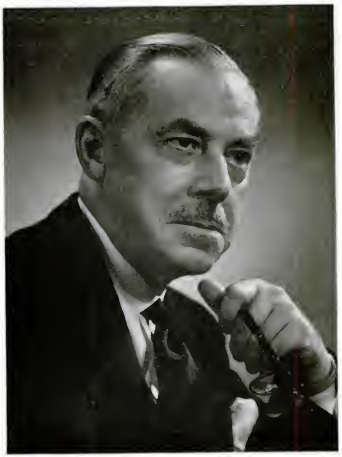
There are many other similarities between us, of customs and habits and ways of speech. This is true to such an extent that even an Englishman sometimes finds it difficult to distinguish between an American and a Canadian. Yet in spite of these similarities we are different. This, it appears to me, is a result of our respective histories, our different political institutions and affiliations, our relative populations and the way we have each developed economically.

In government, we are both federal unions. Both of us have representative government, but Canada has followed the example of the United Kingdom and also has responsible government. At first glance our respective political institutions seem very similar. We both have a central government functioning through federal cabinets at Washington and Ottawa, with an upper and a lower house of representatives of the people. You have

1. Texas—267,339 square miles; Quebec—594,860; British Columbia—366,255; Ontario—412,582 (THE STATESMAN'S YEAR BOOK 1955, pages 734 and 361).

your Congress with a House of Representatives and a Senate; we have our Parliament with a House of Commons and a Senate. Locally you have state legislatures, usually, I understand, with an upper and a lower house; we have provincial legislatures with only one assembly, except in Quebec which also has an upper house.

Your head of state is an elected President and therefore, of necessity, is active in politics. Our head of state is the Queen of Canada, who happens also to be the Queen of England and of other nations. The Canadian head of state is above and beyond the politics of the day and is represented locally by her Viceroy, the Governor-General. He too is above and beyond politics and is appointed by the Crown, but only on the advice of the Canadian Government. This is but one of various differences in our two systems of government.



Paul P. Hutchison

The Canadian system is responsible as well as representative government. As a result the Canadian Prime Minister, as head of the Cabinet, and his colleagues in that Cabinet, are responsible to Parliament and the government of the day must answer in the House of Commons for its actions. The House of Commons is elected for a period not exceeding five years and may be dissolved at any time by the head of state (acting through the Governor-General) on the advice of the Prime Minister. The Cabinet initiates nearly all public bills placed before Parliament; it resigns office when it becomes evident that it no longer holds the confidence of the elected representatives of the people. Members of the Cabinet are elected Members of Parliament. On appointment to Cabinet rank, the new Minister (if he is not a member of Parliament) must stand for election. It sometimes happens that the voters do not approve of his Cabinet appointment and he is defeated. But a Cabinet minister must be a Member, answerable in the House for the actions of the Department which he heads and, in a sense, for the actions of his colleagues in the Cabinet.

The Canadian Senate, however, is not an elected body. Our Senators are appointed for life by the Government of the day, not necessarily from the Government's own party. All legislation must pass both houses and receive the Governor-General's assent. The powers of the Canadian Senate are as wide as those of the House of Commons, except on taxation and money bills, but it is an unwritten law that the Senate does not act in defiance of the will of the people as expressed in the Commons.

Under the Canadian Constitution separate specific powers were allotted to the federal and to the provincial authority, but residuary powers are vested in the federal authority. This was done deliberately when our Constitution was enacted in 1867. In the events leading up to the War Between the States, Canadian leaders of that time saw the result here in the United States of placing the residuary power in the hands of the local state. Local government in the Canadian provinces is also responsible representative government, very similar to federal government but for provincial purposes.

So one sees that though the governmental systems of Canada and the United States appear to be very similar, there are in fact some very fundamental differences. It is not suggested which system may prove best in the long run, but these differences are a natural corollary to our respective historical backgrounds and development.

As has been noted the position of the Canadian head of state, or of the Canadian Prime Minister, is quite different from the position of the President of the United States. We adhere to the monarchial system and you to the republican. This does not mean that Canada is a British colony. We have had self-government for nearly a century. This was given to Canada by the British North America Act, an enactment in 1867 of the British Parliament. That Act fundamentally is the Canadian Constitution

which can now be amended by the Canadian Parliament. Since 1867 Canada has enjoyed domestic autonomy. For some time we were subordinate to Britain in a very few other respects. But, since the Balfour Resolution of 1926, the United Kingdom and the Dominions of the British Commonwealth have been equal in status. The Commonwealth is a very loose and informal organization, hardly even a political one. Since the Statute of Westminster of 1931, the Dominions have been recognized as autonomous, internationally as well as domestically. As a matter of fact, Canada has negotiated its own treaties since 1893.

Canadians are proud of their part in the Commonwealth. We believe it is the most workable and successful league of nations or united nations organization so far. In its component parts the individual dominions are not merely followers of Britain. As long ago as 1922 the United Kingdom was on the brink of war with Turkey, in the Chanak Incident, but Canada's unwillingness then to support the British view undoubtedly resulted in more peaceful steps being taken.

Canada has had self-government only half as long as has the United States, but as Prime Minister St. Laurent has said:

> The Commonwealth relationship has created in all its members a habit of understanding and cooperation which makes it easier for our nations and our governments, whether inside or outside the Commonwealth, to further whatever common interests we may have.

Our partnership in the Commonwealth and two world wars in one generation have brought many of our Canadian citizens into a close personal contact with many individuals of other races, creeds and colors. With such contacts have come understanding and appreciation of the aspirations of many different peoples. Canadians also appreciate with respect the long and intimate experience which Britain has had in world affairs with peoples of all races. In addition, for some generations now our Canadian statesmen have worked closely within the Commonwealth and Empire with the native leaders of the Middle East, Africa, India, Ceylon and the Far East. Canadian views on foreign affairs therefore come from practical knowledge and experience.

Your recent Ambassador to Canada has frequently suggested that Canada should not be taken too much for granted. It is natural that we in Canada should know a great deal about your country because you are one of the great leaders of the world today, but we agree with your Ambassador and sometimes feel that you do not know enough about our country and its coming of age. Perhaps, too, we still suffer from Kipling's "Our Lady of the Snows". The Poet of Empire's song might well have been different if he had come to swelter with us in the tropical heat of some of our summers!

We should like more of your average citizens to come to see us and get to know us better. The tourist trade between us is a great one, yet in 1954 Canadian tourists to the United States spent here thirty-three million dollars more than American tourists did in Canada.[2] Other pertinent facts about our economy and development which apparently come as a surprise to many Americans are the following:

> That in Canada today only twenty per cent of its population is gainfully employed in agriculture, which is a complete change since the last century;
>
> That Canada is now principally industrial with pulp and paper, mining, chemicals, textiles, engineering, iron and steel, hydro-electric power, oil and uranium projects which equal or exceed those in the United States;[3]
>
> That Canada's population has increased by fifty per cent in the past twenty-five years;[4]
>
> That Canada's gross national product during the same period has increased from four billion to twenty-six billion dollars;[5]
>
> That Canada during World War II received no financial aid from the United States and in fact in proportion to our population competed with you in financial aid to the Allies;
>
> That Canadians in the income bracket of from $10,000 to $100,000 pay more income taxes than do Americans.[6]

In studying and gaining understanding of our economy it is essential to take into consideration what probably is the greatest difference between us—the size of our respective populations. Canada covers seven per cent of the total land surface of the globe and is second in size only to Russia, yet its population is only one tenth of that of the United States. Not only is this perhaps our greatest difference but also the one which leads to the greatest difficulties of the present day between us—difficulties in the economic field.

Canadian Problems . . .
Exports, Investment Capital

Canada with her small population and her rapid development in the past quarter of a century is much more dependent upon exports than you are and we still have a great need for investment capital. In my country there is a strong feeling that Americans generally are inclined to think of Canada as a mere economic extension of the United States and fail to appreciate the economic difficulties peculiar to Canada. It may come as a surprise to many Americans that we are each other's best customer, not potentially, but actually, and that no two other countries in the world exchange so great a volume of merchandise. Our annual mutual trade is now a matter of between two and a half and three and a half billions of dollars. Both countries are therefore extremely important to each other economically. It is natural that Canada should be more conscious of this because we are constantly faced with our ad-

(Continued on page 1092)

2. Canadians in the U.S.A. $313,000,000; Americans in Canada $280,000,000 ("Canada 1956" prepared by Dominion Bureau of Statistics, Ottawa page 261).

3. Canada ranks first among the nations in the production of newsprint, nickel, asbestos and platinum; second in wood pulp, gold, aluminum, zinc, uranium and hydro-electric power; third in silver and sawn lumber; fourth in wheat, copper and lead ("Canada 1956").

4. 1931-10,376,786; 1955-15,601,000 ("STATESMAN'S YEAR-BOOK 1955" and "Canada 1956").

5. Hon. A. D. P. Heeney's address to Montreal Board of Trade, February 27, 1956.

6. See A. Milton Moore's *How Income Tax Varies*, TORONTO SATURDAY NIGHT (November 20, 1954).

The Task of Waging Peace:

The U. N. Balance Sheet After Eleven Years

by Henry Cabot Lodge, Jr. · *United States Ambassador to the United Nations*

■ **Ambassador Lodge spoke Thursday evening, August 30, at the Annual Dinner, the climax of the Association's 79th Annual Meeting in Dallas, where some 1400 had assembled in the Main Ballroom of the Statler Hilton. His address was a discussion of the United Nations and its achievements during the first eleven years of its existence.**

■ It is a great honor and pleasure for me to address the American Bar Association. As an organization and as individuals you have contributed immensely to our national life and to the leadership of public opinion in support of our American constitutional system. As our country assumed its increasing role of leadership in world affairs, you have helped to see that we performed that role in a way that was true to our national heritage.

Even though I am not a lawyer, it is clear to me—as it must be to every citizen—why you who are leaders in the law take an interest in international affairs and particularly in the United Nations. Our century has witnessed two enormous tragedies of war. War, which breeds chaos and suffering, is the very opposite of law, which promotes harmony and order. In representing the United States at the United Nations I am, so to speak, in the war prevention business, and I think that as lawyers you may be interested in how business has been going.

In the United Nations, under President Eisenhower's leadership, we have, in football language, gained some ground. Let me cite a few specifics:

First, working in the United Nations Security Council, in close cooperation with our South American allies, we played a decisive part in foiling the Communist attempt to take over Guatemala.

Second, we used the uniquely influential United Nations loudspeaker to arouse world opinion against Communist attempts to take over Formosa, with the result that in that dangerous area we still have peace—and have surrendered nothing.

Third, when Red China illegally imprisoned fifteen United States Air Force fliers captured in the Korea war, the General Assembly, by a forty-seven to five vote condemned their detention, demanded their release, and sent the Secretary General to Peking—with the result that today every one of those fifteen fliers is safely home.

Fourth, we have used the United Nations' loudspeaker again and again to nail Communist distortions on the spot and to expose to world opinion the brutal Red techniques of forced confessions, wartime atrocities, slave labor and the colossal lie about germ warfare.

Fifth, on thirty separate occasions in the past three years we have led the United Nations in its rejection of the attempt to seat Communist China.

Sixth, through the United Nations, President Eisenhower has projected to the world his magnificent conception of atomic energy consecrated not to man's destruction but to his life—and thereby he has dramatized for the whole world the deep devotion of America to peace.

Seventh, the United Nations overwhelmingly endorsed the President's bold proposal for mutual arms reduction and protection against aggression by aerial sentinels in an "open sky", and United Nations members have noted with great interest his offer of United States' participation in an international fund for economic development, the money to come from the savings from disarmament with effective inspection.

Eighth, we have seen to it that every single American employed by the United Nations is screened in accordance with Civil Service Commission and FBI procedures, for

the good and sufficient reason that with so many good Americans to choose from, there is no justification for employing one single American Communist.

Ninth, and perhaps most important, we have continued to help build the United Nations into a realistic and effective agency for peace, able to put the damper on disputes before they turn into wars, and thus to guard mankind against the frightful calamity of a modern global war.

This is, I think, a record of progress.

We have progressed because we have been learning. In the first decade of the United Nations we as a nation have got rid of some illusions and have had some experience in dealing with reality on the world scene. As one who has gained some of that experience in person, I would like to share with you some reflections on what we have learned.

Thirty years ago many Americans who were determined to prevent war favored the "hitch your wagon to a star" approach, whereby governments made bold legal commitments, in some cases tending to weaken national sovereignty, in the hope that somehow this in and of itself would improve matters—even though it was doubtful whether those same governments would have the popular backing to carry out those commitments if an aggressor challenged them. As we know, such commitments went by the board time after time in the years preceding World War II.

Even eleven years ago, when the United Nations came into being, there were some who expected it to enforce peace among nations by some legalistic magic, so that national military forces would no longer be necessary. But when the United Nations began to face the real problems of the world, this illusion was swiftly cast aside—for a reason which is especially clear to you as lawyers, namely, that law which is not backed by public opinion becomes a dead letter. In our age we are so far from a common world standard of right and wrong that the United Nations cannot possibly "lay down the law" to contending nations, for the simple reason that there is no commonly accepted law to be laid down.

It is not for me, a layman, to expound to you who are distinguished lawyers that unless there is a common sense of justice, a common sense of right and wrong, there can be no effective law. If, for example, in the years just following the American Revolution the State of Pennsylvania, let us say, had had as different a view of the nature of man from that held by the other twelve states as the view of the Soviet Union is different from that of the rest of the world today, there could assuredly have been no United States of America. The fact that we are one nation under one flag is not due to geographical propinquity or racial or religious or occupational homogeneity; it is due to a commonly held view of the nature of man.

Some theorists have urged that the lack of authority in the United Nations should be cured simply by giving it armed forces of its own. This suggestion puts the cart before the horse. To give armed forces to an organization whose members have no common sense of justice and no agreed body of law to enforce would be futile, and no national government could seriously consider doing such a thing. To do so would not be to create a world government, but a world tyranny—which would be even worse than the national tyrannies which plague so much of the world today.

The United Nations . . . *A Lively, Effective Body*

Despite its obvious limits, the United Nations is a very lively and effective body. There are three important ways in which it has proved its effectiveness.

First, it acts, in the words of the Charter, as "a center for harmonizing the actions of nations"—for settling disputes and promoting cooperative projects in the common interest.

Second, the United Nations serves as the most powerful single engine in the world for influencing public opinion, and for bringing the trends of world opinion to a sharp focus on specific issues—such as the Communist aggression in Korea, where fifteen free nations responded to world opinion by sending troops half way around the world to help us stop the aggressor.

And third, by this very influence on world opinion, as well as by the moral influence of the written Charter as a code of conduct, the United Nations is making its steady contribution year by year to the growth of a world-wide sense of justice which will one day make possible genuine and enduring peace among nations.

In all these ways the United Nations serves the interests of the American people in their search for peace with justice. It is a place where we can find common ground with other nations, thus adding greatly to our influence on the world scene.

Our influence in the United Nations is manifest in the record of recent accomplishments which I have already recited. In the United Nations Uncle Sam acts as an advocate before the bar of world opinion. It is a striking fact that in the entire life of the United Nations he has never lost an important case in that court. The recent overwhelming votes in the General Assembly on matters of importance to us bear this out—in December, 1954, forty-seven to five in favor of demanding the release of our American fliers illegally imprisoned in Red China, and in December, 1955, fifty-six to seven in favor of a resolution endorsing the Eisenhower plan to establish aerial sentinels in an open sky as a preventive of great surprise attack and a step toward genuine safeguarded disarmament.

Nobody except the Soviet Union and its satellites voted against those or a host of other important resolutions. In fact, for years the Soviet Union found itself isolated in

United Nations voting. Recently it has sought to break out of this isolation by joining the majority. Thus, for instance, the Soviets found it impossible to act as champions of peace while opposing the international atomic energy agency proposed by President Eisenhower—so they shifted their policy and made the United Nations resolution in favor of this agency unanimous.

In these and other ways the Soviet Union has changed some of its tactics in the world struggle. Having been stopped in their path of conquest by the military barriers which the free world erected against them, they seem determined to wear a cloak of good behavior and thereby to penetrate free countries by deception. In this situation we can accept the good behavior at its true worth without being taken in by the deception. There is no reason why we should lack confidence in our ability to meet such a challenge. Surely we have the necessary flexibility and imagination to understand the minds of other peoples and other governments.

This imagination is important in dealing with our sovereign allies, whose close co-operation is so important to us because, although the United States has 40 per cent of the natural resources of the world, we have only 6 per cent of the world's population, and this means that we must never stand alone.

This imagination is even more vital in our contacts with those countries which are not allies of ours but are not satellites of the Soviet Union either. They cover at least half of the human race. Generally they are committed to political freedom as a way of life. They are even more urgently preoccupied with their struggle against the constant menace of famine and disease. They are all eager to stand on their own feet, and they must be helped to the point where they are able to do so. This is not only humane, it is practical—because in case of emergency they will thus be able to fight for themselves.

Henry Cabot Lodge, Jr.

The minds of the leaders and peoples of these so-called neutral countries are the No. 1 battleground in the present Soviet political and psychological attack on the free world. In that attack the Soviet Union enjoys certain superficial advantages. For one thing, its very poverty gives it a psychological bond with underdeveloped countries.

For another thing, as a totalitarian empire it can make all its important decisions in secret, without the delays of free public debate.

But the fact remains that Communism has always suffered, and still suffers today, from a disadvantage which is basic and is sure to be decisive in the long run—namely, that it is alien to human nature to subscribe for all eternity to the proposition that man must be the slave of the state. That is why Communism has not delivered on its promises of freedom and material plenty, and that is why the leaders of Communism, to keep up appearances, show a persistent weakness for perverting and camouflaging the truth.

When the ghost of Stalin was dishonored last winter, what an amazing demonstration that was! Khrushchev and Bulganin were among those who, on Stalin's seventieth birthday, signed an address to the "great Stalin" saying "all future generations will glorify thy name". But now that the old dictator is safely dead, they portray him as a colossal egomaniac, drunk with power, and so insanely suspicious that he almost paralyzed the state.

Stalin Is Dead . . . *But Stalinism Lives*

By these violent statements against the old regime, the new rulers attempt to make theirs look good by comparison. And yet it appears probable that they have simply substituted, for the time being, the dictatorship of a handful of men for the dictatorship of Stalin. They confirm in so many words and deeds that, if Stalin is dead, Stalinism is very much alive—even including the spurious peace campaigns.

If there were any doubt in our minds on this point, the recent actions of the communist countries should dispel them.

By trading Soviet arms for Egyptian cotton and proposing similar

deals with other Near Eastern countries, Moscow has made what is surely the greatest contribution to international tensions that we have seen in the past year.

Within the Soviet empire, the new regime in the Kremlin has repudiated the Malenkov program of raising the standard of living and emphatically restated the old Stalinist emphasis on heavy industry—which means less bread for the people and more power for the Soviet state.

When the workers of Poznan, Poland, rose up in desperation last June against the Soviet policy of poverty for the workers, not only were they repressed with gunfire—the Communist rulers both in Moscow and Warsaw responded like true Stalinists with the fantastic charge that the riots had been instigated by American agents.

At the United Nations the Soviet representative in the recent meeting of the Disarmament Commission delivered a diatribe against America such as we have scarcely heard in the United Nations since the days of Andrei Vyshinsky. He even repeated the threadbare Communist myth that American munition makers dictate American policy so as to prevent any reduction in armaments. His speech, as I said in his presence, was a scurrilous attack in the very worst traditions of Stalinism.

Meanwhile there is no let up in the steady stream of escapes from behind the Iron Curtain by people who want to lead a new life in the free world. Nor is there any let up in the effort of the Communists to prevent these escapes. Only last January, for instance, an escaping Hungarian fighter pilot was killed when his plane was rammed by a Soviet pilot, who later admitted that he had been ordered to intercept escaping Hungarian aviators. At this rate it would not seem that the peoples of the European satellite countries have much faith in the promises of their Communist rulers.

In the free world a massive Soviet effort is being carried on to bring back the tens of thousands of refugees who have escaped Soviet controls since the Bolshevik Revolution. Now and then such efforts are successful. But the return to the Soviet homeland often seems to be followed by disillusion.

There is a story that illustrates this fact. Recently a Russian refugee in a South American country, who was considering going back to the Soviet Union, got a letter from a friend who had already returned. The letter writer said: "Before you come back, be sure and buy your own furniture. You can get it at the following address". The address given turned out to be that of the local coffin maker.

In the half light of Soviet official secrecy we are told that forced labor is now being reduced—which, incidentally, is the first official admission that there was any such thing in the Soviet Union. Yet at the same time we learn of an underground document from Ukrainian slave laborers, dated September, 1955, complaining of their harsh and bitter life, of the arbitrary prolonging of sentences, of arbitrary exile in remote regions, of miserable living conditions, of prison camps built on the bones of thousands of executed political prisoners.

It is easy to doubt such reports, even to say that they are grisly fabrications, or else to say that these conditions are being changed under the Khrushchev-Bulganin regime. But the fact remains that we of the free world cannot know the truth because there is so much that the Soviet Union does not allow us to see with our own eyes.

Finally, on top of all these actions, the leaders of the Soviet Communist Party still proclaim at the top of their lungs what they call "the invincible historical march of mankind toward Communism"—in other words, world conquest.

To sum up, then, we are faced by a Soviet competitor who is powerful, whose way of life is still repellent to us, and who still seeks to conquer the world. He is also moving with a certain shrewdness to establish himself in the uncommitted and underdeveloped countries of the world. But there are signs, as the President said recently, that some small degree of friendly intercourse may be possible—and we must always keep trying to bridge the chasm.

On President Eisenhower's desk there is a motto in Latin, *Suaviter in modo, fortiter in re*. If the Latin scholars in this audience will forgive me, I will translate that loosely as "Flexible in method, strong in substance". It is in this frame of mind that we must approach the task of waging peace in a troubled world.

Above all, we must not become discouraged. We must never take counsel of our fears. We must remember that, while our antagonist is stubborn, he is not superhuman. Like any other human institution, world Communism reacts to the pressures of world opinion.

This was proved in 1946 in Iran when the Soviet Union withdrew its troops from that country under pressure from the United Nations.

It was proved in 1948 when the Soviet Union abandoned its blockade of Berlin.

It was proved in 1954 when the Soviet Union abandoned its opposition to the Eisenhower atoms for peace program and decided to join the international agency which will soon be a going concern.

It was proved again in 1955 when Red China released the fifteen American fliers whose illegal detention had been condemned by the United Nations General Assembly.

It was proved last fall when the Soviet Union failed to get its ridiculous puppet of Outer Mongolia into the United Nations and abandoned its "all or nothing" position on the admission of new members.

Patience and firmness, and a national strength that is not only economic, military and political but also moral and spiritual—these qualities will get good results. To paraphrase the President again, what we are and what we do at home is more important than what we say

abroad. The progress we are making at home justifies faith that the values which all of us are pledged to defend will long outlast the totalitarian system which threatens us today.

As leaders in American law, each of you has a contribution to make to the leadership which is so important in our world role today. Underlying our national effort on the world scene is the same yearning for peace and the same God-given instinct for righteousness that underlies all civilized laws. The deep conflicts which today divide the world must not tempt us to despair or lead us to think of this world of sovereign nations as being eternally a lawless jungle. Rather the knowledge of these conflicts should make us prize all the more the precious values which it is our duty to defend. From these values in our heritage we draw our strength and our certainty that future generations of Americans—and of other peoples too—will live in freedom, which it is, after all, the aim of all American law to enhance and preserve.

The President's Page

(Continued from page 995)

Advocate General's School, on the beautiful campus of the University of Virginia.

In common with most civilian lawyers, I had the preconceived idea that the military lawyer's principal interest lay in the field of military justice. I soon discovered, however, that although the military lawyer was wholeheartedly dedicated to the proposition that military justice be the fairest, most just, and also the most efficient system of criminal justice, his interest and duties range far beyond criminal law. He is concerned also with the vast problems of international law occasioned by the intercourse of our Armed Forces with the peoples of the nations of the world. He is concerned with a fair and equitable disposition of claims for and against the Government arising from the operations of our forces. He must deal with the legal problems arising from the acquisition and disposal of supplies, equipment and services. He must be prepared to render sound legal advice to commanders in virtually every field of the law; to assist in civil litigation involving the military establishment; and to render legal assistance to military personnel wherever they may come from. To this end, he must maintain close contact with the civilian Bar, the bar associations and legal reference bureaus.

The School is ideally equipped, organized and staffed to provide the training for the responsibilities in these fields. Its graduate level course, which has the wholehearted support of the Association, has provided training for senior judge advocates of the Army and law specialists of the Navy to equip them for leadership in the military law practice. The research phase of this Advanced Course has produced, and will, I believe, continue to produce, significant contributions to the scholarship of military law.

The Judge Advocate General's Corps and the School have been enthusiastic in their support of the American Bar Association. As a significant and dedicated portion of the Bar, the military lawyers deserve, in turn, the wholehearted support of the Association.

Next on the agenda was a whirlwind visit to the State Bar of Michigan, at its annual meeting in Grand Rapids. Hurricane Flossy did her best to prevent our arrival, but we made it under the wire thanks to a chartered plane and a good Yankee pilot who wouldn't let a Southern belle seduce him. Short and sweet is the best way my visit there can be described, but I still found time to be brought up to date with the great progress being made by that Bar since its integration. There too their fifty-year members were honored, and the spirit engendered at their meeting would be hard to duplicate. Among those with whom I visited for a fleeting moment were Albert Blashfield, President, Fred Allaben, who very graciously transported me to and from the airport, and Walter Mansfield, former Chairman of our Insurance Section.

Incidentally, as an aside, Oklahomans these days certainly get around. At Charlottesville I ran into my good friend John Hervey on a tour of duty for the Section of Legal Education and Admissions to the Bar, and at Grand Rapids who should be on the same program but Welcome Pierson. People are saying that Welcome gives quite a talk, so any of you on a lookout for a good speaker might bear this in mind.

A revival of regional meetings of the Pennsylvania Bar Association on October 4 found me dining with my very good friends from nine of the middle counties of Pennsylvania. The Committee for the meeting was headed by Eugene R. Hartman, of Gettysburg, and I was delighted to hear Paul A. Mueller, President of the Pennsylvania Bar Association, who shared the same platform, put in a plug for the American Bar Association.

Past President Jake Lashly and my fraternity brother, Laurance Hyde, of the Missouri Supreme Court, were on hand to greet me when my train pulled in to St. Louis Friday evening, October 5 for the meeting of The Missouri Bar, which I had the honor of addressing at dinner. There I saw many old friends including such American Bar stalwarts as Rich Coburn, Governor from the Eighth Circuit, Harry Gershenson, Past Chairman of the Bar Activities Section, Lon Hocker, Horace F. Blackwell, Jr., the incoming President of the Missouri Bar, and Rush Limbaugh, who, of course, presided with his usual finesse. The integrated Missouri Bar has a well-defined public relations program which is getting splendid results under the direction of T. Harley Pollock which if continued on its projected basis should certainly prove of incalculable benefit to the lawyers of Missouri. All in all the organized Bar throughout the nation is on the march and progress is the keynote.

The Problem of Backlogs:

A National Shortcoming in Our Courts

by Herbert Brownell, Jr. • *Attorney General of the United States*

■ Another of the nationally known speakers who was present at the 1956 Annual Meeting of the Association in Dallas was Attorney General Brownell, whose speech before the National Conference of Bar Presidents was delivered on Sunday, August 26. Mr. Brownell described the Department of Justice's current campaign to reduce the backlogs of cases piled up on the court calendars of many federal courts.

■ I have been asked to discuss today what is unquestionably the most serious problem currently confronting our profession, the problem of congestion in the courts and delays in the administration of justice.

The trial of any civil case, generally speaking, should take place not later than six months from the time of filing of the case. In other words, if the judicial machinery was doing the job it should, and allowing a period normally needed for pretrial preparation, a case should be reached for hearing and adjudication six months after the complaint is filed. This situation prevails in England today, although not long ago a delay of one year was viewed with such alarm that steps were immediately taken to correct the situation.

Statistics recently compiled by Shelden Elliott, the Director of the Institute of Judicial Administration, New York Law Center, disclose that in America, the nationwide average, based on findings from some ninety-seven state courts representing all states and larger cities, is one year from *at issue* to trial for jury cases and approximately five months for non-jury cases. I emphasize *at issue* because that time often has little relation to the time of filing a suit. These statistics further show that in metropolitan areas where the courts have jurisdiction of county populations in excess of 750,000, the average time throughout the nation from *at issue* to trial in jury cases is twenty-two months, ranging from a high of fifty-three months to a low of 4.5 months.

In the federal courts, the picture was equally bad if not worse. Statistics of the Administrative Office of the United States Courts compiled in 1955 disclosed that the median time for disposition of the normal civil case terminated by trial in the eighty-six districts having solely federal jurisdiction was 14.6 months. In some districts a delay of four years was the norm and in others a delay of two or three years was common. However, I am glad to note that Texas, and specifically the Northern District here at Dallas, has the best record in the nation with a median interval of only 4.4 months for the trial of any civil case!

But most encouraging are the figures just compiled by the Administrative Office of the United States Courts for the year ended June 30, 1956. The number of new civil cases filed during that period was over 62,000 but terminations totaled just under 67,000. In fact, 3,000 more cases were filed during the 12-month period than during the corresponding period a year earlier, while terminations exceeded those of fiscal 1955 by 8,000.

Of the civil cases filed during fiscal 1956, more than 21,000 involved the Federal Government, either as plaintiff or defendant. Terminations of these types of cases totaled more than 24,000. Most encouraging was the situation in the Southern District of New York which accounted, according to the Administrative Office, for a great deal of the decrease. The number of cases filed in that District, both Government and private, totaled more than 5,000 but terminations totaled more than 7,000. Speaking solely of Government cases there, 975 were filed while 1,400 were terminated.

Nevertheless, a big job still lies ahead in the attack on backlog. Just

what do the figures mean?

Every citizen is a potential litigant. Few, however, have occasion to participate in a lawsuit more than once. To that litigant his case is unique and vitally important; it may have far-reaching consequences on his life. An inordinate delay may be the decisive factor in his appraisal of the administration of justice and the faith he reposes in the law to do justice. It is therefore essential, if we are to maintain the confidence of the people in our courts that we find the means of eliminating delay which in some cases may result in a deprivation of justice. And it must be done without sacrificing in the interests of promptness any of our procedural and substantive safeguards which are essential to our system of justice. Moreover, unless the legal profession accepts the responsibility of putting its own house in order we will find the job being done by others for us, and in a manner that may not be entirely to our liking.

The Department of Justice has been deeply concerned about the delay in getting a case disposed of in some districts. This special concern arises from the fact that the Government is a party to approximately 60 per cent of all cases, civil and criminal, that are tried in the federal district courts each year.

An All-Out Drive . . . *A Dozen Major Steps*

Our all-out backlog drive actually began moving under full steam in September of 1954, although plans were laid from the day we assumed responsibility for Government litigation. We have had the active cooperation of the organized Bar, the Judicial Conference of the United States, federal judges, court administrators, the Congress and others.

First, we joined in the successful effort to secure an increase in the number of federal judges and adequate salaries and pensions for all federal judges. Enactment of the pay-raise bill has made it possible to interest as judges leading members of the Bar, outstanding lawyers who heretofore could hardly be expected to accept appointment to the bench unless they had independent means.

Second, the prior practice of permitting United States Attorneys to engage in the private practice of the law at the same time they were holding public office was abolished. Then there were recruited in the United States Attorneys' offices outstanding young lawyers from leading firms in their communities and top men in their law schools. Salaries of the United States Attorneys and their assistants were satisfactorily increased.

Third, in order to give the same benefits to the home office in Washington, we instituted in 1954 an honor program of recruiting outstanding young law graduates from all the leading law schools in the country. Initially we made thirty positions available for this program, but it has turned out so successfully that this year we expect to employ about fifty of these young graduates.

This program has two main objectives: first, the Department needs the service of young top-flight lawyers, and we are confident that many who come with the idea of staying only a short time will recognize the importance of Government service, its many opportunities, and will elect to make a career of it. We recognized, too, that the legal profession as a whole will benefit by the intensive training and specialized knowledge of Government practices and procedure that these young people will carry with them if they elect to enter the private practice of law.

Fourth, Congress responded to our request for funds to enlarge our staffs in the United States Attorneys' offices and in some of the Departmental Divisions.

Fifth, we created a number of so-called "task forces", composed of experienced attorneys from the Department, who have been sent out to assist in those districts where the regular complement of lawyers was seriously overloaded with work. The result has been that substantial inroads have been made into the backlog problem where it was most acute.

To illustrate the effectiveness of the task force system, a special team in the Tax Division was able to terminate 442 tax refund cases during a period of ten months ending on June 30, 1956, as compared with the termination of only 269 such cases during an equivalent ten months' period the year before. In the Civil Division, we were able to close in the Court of Claims alone, 226 cases involving $235,000,000.

Sixth, we created an Executive Office of United States Attorneys which is analogous in many respects to the Administrative Office of the United States Courts. By a special IBM case reporting system, each United States Attorney is now provided with the current status of every item under his jurisdiction. In this way we have been able to single out for special action delinquent cases, as well as other matters which might otherwise tend to get bogged down. It has also provided us with the information necessary to determine whether additional personnel or special task forces were required. This system similarly provides the same information to each Division in the Department. For the first time in the history of the Department we now have a complete picture of where we stand and what must be done.

Seventh, in the Antitrust Division, an accelerated program is being carried forward to dispose of cases by the use of consent decrees. Literally thousands of dollars of court work is being saved by our being able to negotiate consent settlements before trial. The public interest, both in the prompt disposition of cases and in the early correction of restraints of trade, is not only fully insured by this procedure but is promoted.

Eighth, we have greatly enlarged the discretion of the United States Attorneys to settle thousands of cases without the necessity of referring the matter to Washington for approval. This has eliminated much of the red tape which contributed to delays in the disposition of cases, as well as in keeping out of court many matters

which might otherwise have needlessly added to the congestion in the courts. We are currently studying to see if a further enlargement of discretion in this area would be justified.

Ninth, last fall and again this spring, the Department advised the federal judges through the Judicial Conference that it was prepared to try cases during the summer months in those courts where the judges believed such a program would be feasible. We recognize, of course, that there are practical difficulties to be overcome. However, recent appropriations to permit the installation of air conditioning will be most helpful in this regard. Already a number of federal courts have held summer sessions and others are planning to reconvene earlier in the fall than in the past.

Tenth, our legislative program has contained a number of proposals which would materially assist in expediting the trial and disposition of cases. I regret to report that the three principal bills were not passed by the Congress:

First, creation of a second group of additional judgeships. Second, creation of a Commission to study means for the codification and unification of foreign and domestic procedures relating to the examination of witnesses, the introduction of foreign documents in evidence and the proof of foreign law. The unprecedented flood of domestic litigation since 1945 with international ramifications has posed baffling and sometimes insoluble problems with resultant impediments in both civil and criminal cases. Third, legislation to curtail the abuse of the writ of habeas corpus by narrowing the area in which applications can be made to lower federal courts to review commitments under final decisions of state courts.

Eleventh, improvements in the Immigration and Naturalization Service in the Department of Justice have been so widespread and effective as to cause a noticeable drop in the backlog of Government cases. The chief pertinent changes are the successful drive to stop the illegal entry of wetbacks across the Mexican border to a point where a scandalous breakdown of law enforcement has been corrected; and a humane change in procedure whereby deportation inquiries are started by an order to show cause instead of arrest, and a more liberal detention policy has emptied the old detention centers such as Ellis Island of all but a handful of cases, composed chiefly of subversives and bail-jumpers and deserting seamen.

Herbert Brownell, Jr.

In fact, the Administrative Office of the United States Courts reports that during fiscal 1956, the number of new criminal cases instituted totalled 28,739, as contrasted with the approximately 35,000 filed in fiscal 1955. And the Administrative Office says that practically the entire decrease results from the reduced number of immigration cases.

In Twenty-Two Months . . . *A Cut of 31 Per Cent*

When we first began this all important drive on the backlog, there was a staggering total of 74,972 cases in court and legal matters not actually in court, civil and criminal, pending in the United States Attorneys' Offices. As of June 30, 1956, just twenty-two months later, this total has been cut by 23,552 cases and matters, a reduction of slightly over 31 per cent. The number of civil cases actually pending in court has decreased by 6,390, or over 27 per cent, leaving the offices with approximately 17,000 civil cases. This is the smallest number of pending civil cases since June, 1946. Pending criminal cases, during the same period of time were reduced by 3,030 cases, approximately 29 per cent. This means that as of June 30, 1956, the United States Attorneys had fewer criminal cases pending in court than at any time in the last twenty years.

There has been another spectacular development which has resulted from this case backlog drive. This has been the substantial increase in the amount of money that has been collected through the United States Attorneys' Offices. During fiscal 1954, prior to the drive, $21,217,000 was collected. In the fiscal year just ended the figure was almost doubled,

and set an all time record for the Department of $41,785,000. In operational costs this means that for every dollar spent the return increased from $2.61 in fiscal 1954 to $3.75 in fiscal 1956.

This program which I have outlined primarily concerns steps taken within the framework of the Department of Justice with respect to Government litigation in the federal courts. However, in searching for the solution, and as our program was being developed, it soon became apparent that the problem of delay must be attacked on all fronts if the optimum currency in litigation is to be achieved.

The basic problem is to overcome inertia. Perhaps the foremost cause of delay is a state of mind; lawyers and judges have come to expect delay; they take it for granted, and have adjusted their work habits accordingly. Even clients have reluctantly resigned themselves to the situation. It is therefore necessary that such fundamental attitudes and concepts be changed, even though there may be some disagreement as to the means, or even the ends to be served.

A second cause for delay has been the lack of co-ordination and cooperation among the many groups who have been independently working on this problem for years. Sporadic efforts here and there have resulted in some good, but they have been overshadowed by the magnitude of the national shortcoming which has become almost chronic.

A third failure has been the inability, through lack of publicity and knowledge of the facts, to solidify public opinion and to obtain public support for changes which are necessary if the problem is to be solved. I am firmly convinced that solutions would soon be forthcoming if the spotlight of public opinion, so much a part of our democratic system, was focused on the judicial branch and the legal profession so that both their accomplishments and weakness were matters of public knowledge. Once the facts and the problems were exposed, corrective action would undoubtedly follow.

In May of this year, upon my invitation, a Conference on Court Congestion and Delay was held at the Department of Justice. We invited the presidents of the bar associations of all the states and larger cities, many of whom are here today, and the heads of other bar, judicial and research organizations. Ninety leaders of judicial, legal and research organizations from every part of the country gathered to pool their knowledge and resources. For two days the subject was discussed in open forum and a definitive program was adopted whereby the Conference, operating on a continuing basis, can prosecute a nationwide, all-out attack on delays in litigation. The Conference will conduct its continuing work through an Executive Committee to be selected by the Attorney General.

The Conference is unique in that it assembles together for the first time a large segment of the Bench and Bar in a co-ordinated program aimed at eliminating delays in litigation. During the ensuing year, the Conference will receive, correlate and report on the need for uniform state and federal judicial statistics; the possibility of rotating judges to congested areas; the extent to which discovery procedures and pretrial conferences can be employed to shorten trial time; whether maximum efficiency in calendar procedures is being employed; the extent to which the judge must exercise control over the progress of litigation; and last, but perhaps most important, the professional responsibility of the Bar to assist in accomplishing these objectives.

I stress this final point because the Conference, in recognition of the importance it attached to co-operative action, unanimously adopted a resolution stating in part that "a cooperative, hard-working joint venture, participated in by all members of our profession in a resolute manner, and carried forward on a day-to-day basis, can materially reduce congestion in our courts in the very near future, with substantial improvement in the administration of justice".

In a very real sense each of us plays an essential working part in the procedures by which justice is administered. Individually, and certainly as a group, by action or inaction, we greatly affect the character of the operation of the courts. Our conduct, collectively and individually, both in and out of court, must be directed to the end of expediting the disposition of cases and not to delaying or impeding their disposition.

While understandably we all have a professional pride in the cases we handle or the clients we represent, we must be ever-mindful of the fact that ours is a public service profession and that our responsibilities as officers of the court transcend our own private or pecuniary interests. We must not condone the docketing of cases when there is no intention of ever bringing them to trial—cases which are merely filed for harassment or other obstructive reasons. Stalling tactics, such as abuse of pretrial, discovery and motion practice and the seeking of adjournments designed solely to wear down opponents, cannot be justified. Recently a study made in the Southern District of New York showed that of 10,735 cases in backlog, over 5,100 were inactive. Of 6,000 cases on the trial calendar, only in 800 did the lawyers on both sides say they were ready. This is not an isolated situation and it is only reasonable to assume that much of the backlog is attributable to dilatory tactics.

Another contributing fact has been the tendency of some lawyers or firms to assume responsibility for more litigation than they can attend to on a current basis. This problem became so acute in the District of Columbia that it became necessary for the court to pass a rule forbidding adjournment to any lawyer when it appeared that he was handling more than twenty-five cases on the calendar. As lawyers, we should assume the lead in cutting the backlog and should not wait to be

prodded into action by the courts.

The task we have set for ourselves is by no means a simple one. Delay is not new in the law and had there been a ready solution it would undoubtedly have been adopted long ago. But just as the present system resulted in part from lack of attention, it follows that constant attention may well be an effective counter-measure. If this organization, and the others which have pledged their co-operation, will devote their time and energy, their organized skill and imaginative approach to the solution of this problem, then substantial inroads into the law's delay will inevitably follow. I am confident that this drive will accomplish its objective for as lawyers and leaders of our communities we recognize that the strength of America lies in the preservation and strengthening of our institutions of freedom of which the impartial, effective and prompt administration of justice is the cornerstone.

Notice of Election of State Delegates

■ The following jurisdictions will elect a State Delegate for a three-year term beginning at the adjournment of the 1957 Annual Meeting and ending at the adjournment of the 1960 Annual Meeting:

Arizona
Connecticut
District of Columbia
Illinois
Iowa
Maine
Michigan
Mississippi
Montana
Nebraska
New Jersey
Oklahoma
Puerto Rico
South Carolina
South Dakota
Texas
Washington
Wyoming

An election will be held in the State of Virginia to fill the vacancy caused by the resignation of Stuart T. Saunders, for the term expiring at the adjournment of the 1959 Annual Meeting.

Nominating petitions for all State Delegates to be elected in 1957 must be filed with the Board of Elections not later than February 15, 1957. Petitions received too late for publication in the February issue of the JOURNAL (deadline for receipt January 4) cannot be published prior to distribution of ballots, which will take place on or about February 22, 1957.

Forms of nominating petitions may be obtained from the Headquarters of the American Bar Association, 1155 East 60th Street, Chicago 37, Illinois. Nominating petitions must be received at the Headquarters of the Association before the close of business at 5:00 P.M. February 15, 1957.

Attention is called to Section 5, Article VI of the Constitution, which provides:

> Not less than one hundred and fifty days before the opening of the annual meeting in each year, twenty-five or more members of the Association in good standing and accredited to a State from which a State Delegate is to be elected in that year, may file with the Board of Elections, constituted as hereinafter provided, a signed petition (which may be in parts), nominating a candidate for the office of State Delegate for and from such state.

Only signatures of members in good standing will be counted. A member who is in default in the payment of dues for six months is not a member in good standing. Each nominating petition must be accompanied by a typewritten list of the names and addresses of the signers in the order in which they appear on the petition.

Special notice is hereby given that no more than twenty-five names of signers to any petition will be published.

Ballots will be mailed to the members in good standing accredited to the states in which elections are to be held within thirty days after the time for filing nominating petitions expires.

JOSEPH D. STECHER
Secretary

How We Elect Our President:

An Electoral College Education in One Lesson

by Joseph F. Dolan • *of the Colorado Bar (Denver)*

■ **On the sixth of this month, more than 50,000,000 Americans will cast their ballot in the quadrennial contest to determine who is to occupy the White House for the next four years. As most Journal readers know, or should know, not one of these 50,000,000 or more voters will vote for either Mr. Eisenhower or Mr. Stevenson, no matter how the ballots are marked or which levers are pulled in the voting booths. The only votes that Mr. Stevenson and Mr. Eisenhower receive this fall will be cast, probably next month, when the 531 Presidential Electors meet in their respective states. Moreover, the choice of these 531 obscure voters is not necessarily limited to the two leading candidates—they could elect John Doe or Joe Blow or even Joe Smith to the nation's highest office. The whole perplexing problem of the American Presidential election is considered here in detail by Mr. Dolan.**

■ The benefits of a college education have been generally recognized by most Americans for many years. Recently, the public and, more particularly, the ninety-six members of the United States Senate were given a college education of a different variety—and it appears to have been beneficial to all concerned. It was an education in the complex subject of how we elect our Presidents, and that's where the college comes in—the Electoral College.

Contrary to popular belief, the people of the United States don't really elect the President and Vice President at all—instead, every four years, the voters in each state vote for "electors", who, in turn, elect the President and Vice President. If you want to win a bet sometime, wager with a friend that he can't name, or even learn the names of the electors from his state in a reasonable period of time. Chances are that unless he asks the Secretary of State or other state election officials, he'll never find out. The fact that our Presidents are picked in this odd way by people not known to the general public has been a cause of concern among students of government for many years.

Senator Kennedy, of Massachusetts, who led the fight against the proposals recently before the United States Senate, expressed the prevailing view when he said that "the electoral college is an unnecessary, confusing, and potentially harmful anachronism".

Why then was there any opposition to proposed reforms? The answer lies in the fact that all of the proposals offered in recent years (except one which Senator Kennedy himself offered) would in addition to abolishing the Electoral College, make much more radical changes in the method of electing our Presidents. Opponents say the changes would drastically alter the Constitution with uncertain effects and endanger our political stability.

What were the proposed changes? How do they differ from the method now in use? What would be their effect?

It should first be pointed out that all the plans currently under discussion would use the same method of proposing the necessary constitutional amendment—a resolution passed by two-thirds vote of each House of Congress. Some plans proposed ratification by the legislatures of the states, and others by conventions especially called for the purpose. In either case, approval by three fourths of the states would be necessary.

The major changes proposed for the election of the President fall into three general classes: 1. Direct election plans; 2. District plans; 3. Proportional plans.

Direct Election Plans. These would provide for direct popular vote nationwide for President and Vice President. One of Senator Langer's proposals would, in addition, provide for a presidential primary.

Other direct election proposals were offered by Senators Humphrey and Lehman.

District Plans. In general, the District Plans would preserve the Electoral College, but eliminate the discretion now given to electors in voting. Electors would be chosen by the voters, one for each congressional district, and, in addition, two for each state.

Proportional Plans. These would abolish the electoral college, but retain the electoral vote. In each state, the electoral votes would be apportioned among the candidates in accordance with the number of votes they receive, rather than the "winner take all" system now in use. The candidate with the most electoral votes nationwide would be President, if he gained a certain percentage of the total (40 per cent in the original Daniel plan, 40 per cent under the old Lodge-Gossett plan of 1950, and 45 per cent under the modified Daniel plan on which the Senate voted this year.)

Combination Plan. Proponents of the District Plan and the Proportional Plan joined forces this year and offered a combination plan, known as the Daniel substitute. It would permit each state to adopt either the District Plan or the Proportional Plan.

"Minority Presidents" . . . *A Flaw in the Present System*

Those who urge "reform" frequently assert that one of the main drawbacks of the present system is that it permits election of a President who trails in the popular vote. This is true, and it has happened on three occasions—in 1824 (when John Quincy Adams was selected by the House of Representatives), in 1876 (Rutherford B. Hayes), and in 1888 (Benjamin Harrison). But the election of the so-called "Minority President" has not occurred in the last seventy years, and is unlikely to occur. Furthermore, this criticism of the existing system loses weight when it is realized that the changes proposed by the Daniel Compromise Plan would have permitted the same thing to happen. This would be so regardless of whether all states adopted the proportional plan, all adopted the district plan, or both plans were in use among the states.

Another criticism leveled at the existing system is that it permits electors to ignore the voters of their state. Electors are generally regarded as persons who should ignore their own desires and merely vote the preference expressed by the voters of their state. But the Constitution has never required this. Indeed, the original intent of the framers of the Constitution was just the opposite. They wanted the electors to pick the President, not the people. Gradually, the system has evolved so that the electors are regarded to be morally bound (some states bind them by law as well) to cast their votes for the man to whom they are pledged. So well has this system worked that from 1820 to 1952, out of 12,463 electoral votes which were cast, only 5 were cast contrary to instruction.

Under the present system, if no candidate receives a majority of the electoral votes, the election is decided by the House of Representatives, choosing from the persons, not exceeding three, having the highest number of electoral votes. Such an election is carried on by ballot, with each state having one vote. In the past this has resulted in secret elections, with the people not knowing how their Representatives voted. Of the proposed changes, the Kennedy Amendment was the only proposal which would have changed this so as to require a roll call vote to be taken.

Critics of the present system contend that the votes cast for the loser in each state are now "lost".

To say that the Democratic votes for President in a state, say Colorado, are "lost" in a year that the Republicans carry the state and thus win its electoral votes is like saying a man has "lost" his dinner after it has been completely digested, and the energy contained in it has been transmitted to his body. He has used up his dinner, but he certainly hasn't "lost" it. The fallacy of the specious argument of "lost votes" can best be shown by carrying it to its logical, or rather illogical, extreme. Under the direct election method proposed by several Senators, all of the votes in the country would be counted together, and the person having the most votes would be President. But what about the "lost" votes of all those millions of people who voted for the other candidates? Should we, to please those who shed crocodile tears over "lost" votes, provide that if the Republican candidate gets 55 per cent of the vote and the Democratic candidate gets 45 per cent, the Republican shall be President 55 per cent of the year, and the Democrat for the remaining time?

Neither of the alternative proposals before the Senate this year would have changed the "lost vote" situation—the District Plan would move the lost vote fallacy from the state level down to the congressional district level, and the Proportional Plan would move it up to the national level. The result would be the same as at present—after having been counted, they would have exhausted their power as votes, and would have been counted for a winner or counted for a loser.

A shocking possibility which might have arisen under the Daniel Plan was discussed in the floor debate—each state would be given the right to choose either the District Plan or the Proportional Plan. It was pointed out that states might jump back and forth from one plan to another as each election approached, depending on their guess as to which plan would best serve the political ambitions of their state or its favored candidates. Even more shocking is the possibility, which was not discussed, that a state might attempt to select one or the other system *after the election had been held.*

The Proposed Changes . . . *Some Technical Defects*

Were the proposed changes in the election of the President really carefully thought out? Opponents point-

ed out that the Constitution was a sacred document which should not be amended casually. Although committee hearings had been held on various proposals, there was a succession of amendments from the floor, some adopted and some rejected. The dangers of this sort of approach, and the wisdom of the ultimate Senate action sending the resolution back to committee can be shown by the following:

1. One of the Humphrey substitutes would have required a post-election Lame Duck session of Congress unless there was a change by statute. If there were a tie in the vote, the Lame Duck House of Representatives would pick the President. Similarly, a tie for Vice President would be decided by a Lame Duck Senate.

2. The Daniel substitute would have required Congress, in cases where it decided the election, to pick from the highest three candidates. At present the House picks from the top two or three, as it chooses. In addition this substitute would have compelled electors to vote as pledged, and yet prohibited them from voting for a candidate for Vice President if he was from their state and they voted for President for a man from their state.

3. The Lehman substitute made no provision whatever for deciding a tie in the popular vote, and the Langer substitute made no provision for a tie in the Presidential Primary.

4. The original Daniel resolution, as well as the Lodge plan which the Senate adopted in 1950, made no provision for a tie between two candidates who each had between 40 and 50 per cent of the electoral vote.

5. The Smathers resolution made no provision for a three or more way tie in either the primary or general election.

Proponents of the proportional plans agree that, if one of them were adopted, more elections would be thrown into Congress for decision. For this reason, the original requirement of an absolute majority of electoral votes was lowered to 40 per cent, then raised back to 45 per cent. In a further effort to meet the objections caused by this failing, they provided that such elections would be decided by the House and Senate voting jointly, with each member having one vote. (At present, each state has one vote. Its delegation in the House votes as a unit after deciding among themselves how the vote shall be cast.)

A startling fact, which was not pointed out in the recent debates, is that, under the House precedents, this would almost certainly result in a secret election. The people would not know how their Representatives and Senators voted, as it would be conducted by secret ballot. Indeed, it is likely that the people would not even know how each state voted.

The leader of the floor fight against the proposals to change the method of electing the President, Senator John F. Kennedy, Democrat of Massachusetts, agreed that the present system could be improved, and offered an amendment which would have:

1. Abolished the Electoral College, which, as we have said, he described as an "unnecessary, confusing and potentially harmful anachronism";

2. Kept the present system of electoral votes and allocation of such votes among the states;

3. Prevented the election of a President and Vice President of different parties;

4. Eliminated secret voting in elections decided by Congress;

5. In such elections, have the House and Senate vote jointly, each member having one vote;

6. Discouraged nomination of two candidates from the same state by one party for President and Vice President.

The Kennedy proposal, however, did not come to a vote in the Senate.

The direct vote plan undoubtedly has the most general public appeal. It seems to most of the public to be more democratic than the existing system. But it ignores the "great compromise" that permitted our country to be founded. Small states have always feared that with such a system, or with a one-house (unicameral) legislature, they would be ignored in the determination of national policy. For this and other reasons, such plans have never been able to gain much support in the Senate. The Lehman plan was rejected seventeen to sixty-six by the Senate this year, and the Langer plan by thirteen to sixty-nine. One member of the Senate, Colorado's Senator Allott, explained his vote against the Lehman Amendment by saying: "I was not willing to preside over the dissolution of the federal system of our Government."

Opponents of the compromise contended that it was a two-headed monster which combined the disadvantages of both the District and Proportional Plans. They said that it would increase the strength of the small one-party states, which in general are controlled by the more conservative elements of each party. In addition, they claimed, to the extent that states adopted the Proportional Plan, splinter parties would be encouraged. They also saw the possible extension of the proportional sys-

Lainson Studio

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tem to congressional elections, which has, in European countries, resulted in unstable governments.

Critics of the Senate's rule of unlimited debate sometimes assert that debate never changes votes. The long and vigorous debate against the electoral college changes, led by Senators Kennedy and Douglas, disproves this assertion. Nine of the Senators who originally co-sponsored the plan voted against it after hearing the debate. Furthermore, eighteen Senators who had supported the almost identical Lodge-Gossett plan in 1950 voted against the proposal in 1956.

Americans have always shown great sympathy for anything labelled as "reform", even when they are not sure what the results of the proposed reform will be. Few of those who cried for changes in the Constitution "to permit more democratic elections of the President" realized that state legislatures already possess the power, if they so desire, to adopt either the District or Proportional methods of awarding electoral votes. These two had been lumped together in the Daniel Compromise in an effort to get the joint support of all those Senators, the thought being that each could vote for the whole resolution secure in the belief that his proposal was going to go into effect. In the incisive debate, opponents pointed up the defects of this strategy and of the resolution itself, so that the strategy backfired and the opposition received the support of those opposed to either proposal.

Another thing the reformers overlook is that there are even more glaring inequities in the gerrymandered congressional districts, and the incentive to increase such inequities would have been even greater under the District Plan.

In Texas, one county has one sixth of the population of the entire state, and yet only 1/22 of the state's representation in Congress. Indiana has one urban congressional district which is larger than the combined population of two of its remaining Districts. In Illinois, one District has a population of over a million, and another little more than 200,000.

These uneven districts represent "gerrymandering", a device used by political parties dominating state legislatures. District lines are sometimes drawn for political reasons, rather than for sound reasons of population distribution, geography, etc. Both the Democrats and Republicans have engaged in this gerrymandering in the past, and the District plans provide greater incentive to gerrymander than now exists.

Reformers' zeal, properly directed at state legislatures, might correct some of these abuses.

It is clear that neither the Direct, District or Proportional Plans, nor a combination plan, can pass the present Senate with the necessary two-thirds vote. The Proportional Plan was adopted with the necessary majority in the Senate in 1950, but was not passed by the House. More than likely no plan can be adopted if it radically changes the relative strength of the various states in the presidential elective process. It is possible that a moderate reform bill such as that proposed by Senator Kennedy could be adopted, and the subject is almost certain to come before the Senate again early next year.

President Eisenhower, at a press conference March 2, 1955, said that he saw "no great reason for changing" the Electoral College system. He added that while the present method "seemed a little awkward" it "tended to preserve a two-party system".

National Conference of Commissioners on Uniform State Laws

■ The National Conference of Commissioners on Uniform State Laws met in its 65th year at Dallas during the week preceding the Annual Meeting of the American Bar Association. The Conference met all day every day Monday through Friday, and in addition had a session on Saturday morning.

There were 112 Commissioners and two Associate Members present, representing forty-five jurisdictions. Although on several occasions in the past more than forty-five jurisdictions have been represented, there were more Commissioners present at the Dallas meeting than at any other meeting in the history of the Conference.

The Conference approved two Uniform Acts: the Uniform Gifts to Minors Act and the Uniform Securities Act, which were approved during the following week by the House of Delegates of the American Bar Association. In addition, the Conference approved amendments to the Uniform Arbitration Act, which were also approved by the House of Delegates.

The Conference gave consideration to a proposed Uniform Simplification of Security Transfers Act, but referred the Act to the Drafting Committee for resubmission at next year's annual meeting in the light of numerous comments and suggestions from the floor of the Conference. Consideration was also given to drafts of a Uniform Estate Tax Apportionment Act, a Uniform Act on Allocation of Net Income of Multistate Businesses, and a Uniform Chemical Tests as Evidence of Intoxication Act.

The Conference also gave extended consideration to the subject matter of water resources with a view to considering possible legislation on this subject matter.

A number of new subject matters were referred to Committees of the Conference for study and report at the next annual meeting, among these matters being a proposed Uniform Act on Civil Rights of Convicted Persons and a proposed Uniform Act on Facsimile Signatures by Public Officials.

Proceedings of the Assembly:

79th Annual Meeting, Dallas, Texas

The Assembly of the American Bar Association is composed of all members of the Association who register at an Annual Meeting. In Dallas, there were four sessions of the Assembly, not counting the Annual Dinner of the Association on Thursday night, August 30, which is regarded as a session of the Assembly. The sessions of the Assembly this year were unusually well attended, with "standing room only" at two sessions.

First Session

The first session of the Assembly of the American Bar Association at the 79th Annual Meeting in Dallas, Texas, was held in the Main Ballroom of the Statler Hilton, with President E. Smythe Gambrell presiding. The meeting was called to order at 10:00 A.M.

The Reverend William C. Martin, Resident Bishop of the Methodist Church, pronounced the invocation.

The overflow audience then heard addresses of welcome from Allen Shivers, Governor of Texas, Robert L. Thorton, Sr., Mayor of Dallas, Newton Gresham, President of the State Bar of Texas, and Dwight L. Simmons, President of the Dallas Bar Association. The response was made by William T. Gossett, of Dearborn, Michigan.

President Gambrell introduced the distinguished guests of the Association and the officers and members of the Board of Governors seated on the platform.

The following were then nominated for three-year terms as Assembly Delegates. Five Assembly Delegates are elected at each Annual Meeting. This year's nominees included: A. L. Merrill, of Pocatello, Idaho; Ashley Sellers of Washington, D. C.; P. Warren Green, of Wilmington, Delaware; John R. Snively, of Rockford, Illinois; David Nelson Sutton, of West Point, Virginia; Joe C. Barrett, of Jonesboro, Arkansas; Stanley B. Balbach, of Urbana, Illinois; William A. Sutherland, of Atlanta, Georgia; James D. Fellers, of Oklahoma City, Oklahoma; Robert M. Benjamin, of New York, New York; John C. Goins, of Chattanooga, Tennessee; David W. Robinson, of Columbia, South Carolina; and Cecil E. Burney, of Corpus Christi, Texas. (Further nominations were made later in the session. See below.)

President Gambrell then turned the chair over to John D. Randall, of Cedar Rapids, Iowa, the Chairman of the House of Delegates, while Mr. Gambrell delivered the President's Annual Address, which was published in the September issue of the JOURNAL (42 A.B.A.J. 825).

Willoughby A. Colby, of Concord, New Hampshire, Chairman of the Section of Bar Activities, then presented awards of merit and certificates of honorable mention to state and local bar associations for "outstanding and constructive work during the past year". The following bar associations received awards:

Illinois State Bar Association, State Bar of California, The Florida Bar, the North Carolina Bar Association, The Bar Association of St. Louis, Stark County Bar Association (Canton, Ohio), Portage County Bar Association (Kent-Ravenna, Ohio), Barber County Bar Association (Medicine Lodge, Kansas.)

On motion of Cody Fowler, of Tampa, Florida, the Assembly then received more nominations for Assembly Delegate. Mr. Fowler said that the crowd was so great that some who desired to make nominations had been unable to get into the hall to do so. The following additional names were received: Julius Applebaum, New York, New York; Paul W. Lashly, of St. Louis, Missouri; Forrest A. Betts, of Los Angeles, California; Archibald M. Mull, Jr., of Sacramento, California.

Albert B. Houghton, of Milwaukee, Wisconsin, Chairman of the Committee on Traffic Court Program, then presented awards to fifty-one cities selected for the improvement of their traffic courts. Mr. Houghton stressed the fact that these awards were for improvement of traffic court administration. "Other cities may have higher standards, but have not shown the same improvement", he declared.

The following received the awards:

Group I	Population over 1 million	
	First Place	New York, New York
	Special Citation	Chicago, Illinois
		Los Angeles, California
Group II	750,000 — 1 million	
	Special Citation	Washington, D. C.
Group III	50,000 — 750,000	
	First Place	Seattle, Washington
	Second Place	Buffalo, New York
	Special Citation	Minneapolis, Minnesota
		New Orleans, Louisiana
Group IV	350,000 — 500,000	
	First Place	Atlanta, Georgia
	Special Citation	Portland, Oregon
		Denver, Colorado
		Kansas City, Missouri
Group V	200,000 — 350,000	
	First Place	Norfolk, Virginia
	Second Place	Miami, Florida
	Special Citation	Oklahoma City, Oklahoma
		Akron, and Dayton, Ohio
Group VI	100,000 — 200,000	
	First Place	Peoria, Illinois
	Second Place	Shreveport, Louisiana
		Ft. Wayne, Indiana
	Special Citation	Arlington, Virginia
		Pasadena, California
		Phoenix, Arizona
		Salt Lake City, Utah
Group VII	50,000 — 100,000	
	First Place	Riverside, California
		Kalamazoo, Michigan
	Second Place	Hamilton, Ohio
		Miami Beach, Florida
	Honorable Mention	Stockton, California
	Special Citation	Inglewood, California
		Lansing, and Dearborn, Mich.
		Hammond, Indiana
		Springfield, Ohio
Group VIII	25,000 — 50,000	
	First Place	Warren, Ohio
		Greenville, Mississippi
	Second Place	White Plains, New York
		Fond du Lac, Wisconsin
	Honorable Mention	Great Falls, Montana
		Hamtramck, Michigan
	Special Citation	Appleton, Wisconsin
		Euclid, Ohio
		Battle Creek, Michigan
Group IX	Population over 10,000 and under 25,000	
	First Place	East Lansing, Michigan
	Honorable Mention	South Milwaukee, Wisconsin
		Lodi, California
		Renton, Washington
	Special Citation	Ironwood, Michigan
		Corvallis, Oregon
		Richland, Washington
		Midland, Michigan

Mr. Gambrell then called for any resolutions that members wished to offer for consideration by the Committee on Resolutions. Seven members offered resolutions.

The Assembly then recessed and the Annual Meeting of the American Bar Association Endowment was called to order, presided over by Carl B. Rix, of Milwaukee, Wisconsin, President of the Endowment. The Endowment is composed of all members of the American Bar Association.

Mr. Rix announced that the new insurance program had resulted in dividends of $77,000 paid to the Endowment by the New York Life Insurance Company in its administration of the program.

On motion of Ronald J. Foulis, of Washington, D. C., the Endowment members voted to adopt the amendments to the Endowment's by-laws as published in the June issue of the JOURNAL (42 A.B.A.J. 525).

Ronald J. Foulis, of Washington, D. C., Jacob M. Lashly, of St. Louis, Missouri, and Harold J. Gallagher, of New York, New York, were elected Directors of the Endowment.

The meeting ended at 12:25 P.M.

Second Session

■ The second session of the Assembly convened at 2:30 P.M. on Wednesday, August 29, with President Gambrell in the chair.

The invocation was pronounced by the Right Reverend Monsignor William F. O'Brien, V.G., Pastor of the Cathedral of the Sacred Heart.

The two speakers of the afternoon were Sir Reginald Edward Manningham-Buller, Q.C., M.P., Attorney General of England, and Paul P. Hutchison, Q.C., President of The Canadian Bar Association. Both these addresses are printed elsewhere in this issue of the JOURNAL.

Third Session

■ The third session of the Assembly convened at 2:00 P.M., Thursday, August 30. President Gambrell presided.

The invocation was pronounced by Dr. Levi A. Olan, Senior Rabbi of Temple Emanu-el.

The 1956 Ross Essay Prize was presented to Beecher N. Claflin, of Stamford, Connecticut. Mr. Claflin delivered a synopsis of his winning essay on "The Impact of Federal Subsidies Upon State Functions". The entire essay was published in the October issue of the JOURNAL (42 A.B.A.J. 935).

The address of the afternoon was then delivered by Sir Edwin Savory Herbert, LL.B., K.B.E., President of the Law Society of England. Sir Edwin's address is published elsewhere in this issue of the JOURNAL.

The Assembly then voted to approve the amendments to the Constitution and By-laws which had already received the approval of the House of Delegates. For the language of these amendments, see page 1057.

The report of the Resolutions Committee was then given by Robert Troutman, of Atlanta, Georgia. There were eight resolutions to be considered.

The first, submitted by George E. Morton, of Milwaukee, Wisconsin, condemned social security and urged the Supreme Court to hold the law "absolutely void". On Mr. Troutman's motion, the Assembly voted not to adopt the resolution.

The second resolution, submitted by Dorothy Frooks, of New York, New York, condemned the practice of including the name of a deceased partner in a law firm's name. On Mr. Troutman's motion, this resolution was referred to the Committee on Professional Ethics and Grievances.

The third resolution, also submitted by Miss Frooks, dealt with limitation of income taxes, and was referred to the Committee on Income Tax—Submission of Amendment.

The fourth resolution, submitted by Frank B. Gary, of Columbia, South Carolina, urged the Attorney General to invite the Association to assist him in making recommendations to the President on federal judicial appointments. This resolution was considered along with the fifth resolution, offered by Ben R. Miller, of Baton Rouge, Louisiana.

Mr. Miller's resolution was as follows:

WHEREAS, A qualified and independent judiciary is indispensable to the maintenance of a co-ordinated branch of the government under our Constitution and to the protection of the freedom and rights of every individual; be it

RESOLVED, That the incoming President of the United States be urged to nominate for appointment to judicial office only the best qualified lawyers or judges available, without regard to their political affiliations; and be it further

RESOLVED, That we commend the preliminary steps that have been taken by the Attorneys General of the United States for the past several years in procuring the assistance of the American Bar Association through the Standing Committee on Federal Judiciary, for determination of the competence of proposed nominees and urge the continuance and implementation of this procedure;

BE IT FURTHER RESOLVED, That the Secretary of the Association forward copies of this resolution to the incoming President of the United States and to his appointee as Attorney General of the United States.

Speaking for the Resolutions Committee, Mr. Troutman moved to adopt Mr. Miller's resolution instead of Mr. Gary's. He explained that the resolutions were similar and the Committee felt that Mr. Miller's approach was preferable. Accordingly, the Assembly voted to adopt Mr. Miller's resolution and to reject Mr. Gary's.

Resolution No. 6 was offered by Palmer Hutcheson, of Houston, Texas, and read as follows:

RESOLVED, That as lawyers we recognize that the remedy of specific performance was originally necessitated by the existence of unwilling or recalcitrant compliance with judgments of the highest courts of the land, and that either the one or the other (that is, the specific performance or willing compliance) is the only successful means of avoiding enforcement by those charged with the duty of execution thereof.

Mr. Troutman said that the Resolutions Committee's position was that the resolution was a statement of fundamental principles and that reaffirmation was unnecessary.

Mr. Hutcheson urged the Assembly to adopt the resolution. He asked, "Lest silence be considered to give consent, why not speak with the authority we have as the representatives of the legal profession of the United States of America and say to one and all, 'More important than segregation, more important than desegregation, more important than civil rights, is the respect for law and order?'" He urged the Assembly not to give "silent consent to the hanging in effigy of a Negro because he tried to enter a school in compliance with the law of the land, or that 200 white boys should lawfully attack ten Negro students in Clinton, Tennessee, or that Alabama should adhere to the principle that, despite a court order, a Negress who enters the school there can be thrown out by a mob."

Mr. Troutman replied that the Committee had not the slightest intention, by silence or affirmation, of giving sanction to mob rule or to flouting the law.

A. R. Stout, of Waxahackie, Texas, declared that the resolution was like the Negro that went into court for a divorce from his wife. "His grounds were that she talked all the time. The judge said, 'What does she talk about?' The Negro said, 'She never do say.'"

C. Waldo Haines, of Atlanta, Georgia, urged the Assembly to adopt the resolution. ". . . we should restate that as our affirmation of faith" he declared. "Where the mob rules, there isn't any law at all."

Franklin Riter, of Salt Lake City, Utah, moved that the resolution be adopted.

A standing vote was taken, and the resolution was adopted, 118 to 101.

Charles J. Bloch, of Macon, Georgia, immediately moved that the action of the Assembly be reconsidered and placed on the agenda for Friday morning.

He was ruled out of order since

(Continued on page 1045)

AMERICAN BAR ASSOCIATION

Journal

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EDITORIAL OFFICES

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Signed Articles
As one object of the *American Bar Association Journal* is to afford a forum for the free expression of members of the Bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of the *Journal* assume no responsibility for the opinions or facts in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

■ *Let's Solve the "Law's Delay"*

Attorney General Brownell's address, appearing in this issue, is a direct challenge to the legal profession to cooperate with the courts in speeding the administration of justice. Much progress has been made since Hamlet included "the law's delay" in his reasons for contemplating suicide—much of this progress in the last quarter of a century. The Department of Justice can do only so much in the federal courts and it is doing that in a conspicuous manner. The federal and state courts can accomplish only so much. One judge, who must cope with hundreds of cases and hundreds of lawyers, can make only limited progress in overcoming the inertia of some members of the legal profession or in pushing to trial a lawyer who has a poor case and hopes that by long enough delay he may achieve a satisfactory settlement and escape altogether the necessity of trying his case.

The Attorney General suggests that an aroused public opinion to obtain support for necessary changes may lead to a partial solution of the problem, but the Bar should not have to wait until it is forced into effective action by public opinion. This sometimes results in proposed remedies that are unwise. Bar organizations under the leadership of the Association are seeking improved relations between lawyers and the public. Perhaps greater emphasis should be placed on informing the public of what lawyers are doing to speed the dispensing of justice and eliminate unnecessary delays. If lawyers everywhere accept the Attorney General's challenge many of the problems caused by congestion and delay will be solved.

■ *A Mighty Oak*

Tuesday, August 28, during the Annual Meeting of the American Bar Association, an inspiring meeting was held over which Chief Judge John J. Parker, of the Court of Appeals for the Fourth Circuit, presided. That meeting had its genesis in one which occurred in 1937 when Arthur T. Vanderbilt was elected President of the American Bar Association and Judge Parker was chosen Chairman of the Section of Judicial Administration. At that time the Section appointed seven committees and charged each of them with making recommendations a year thence for the improvement of specific phases of judicial administration in the state courts. To one was assigned the subject of trial practice, to another the law of evidence, to another appellate practice, and so on. The personnel of those committees was well chosen. Each committee took its task seriously and made an exhaustive study of its subject. Each came to the 1938 meeting in Cleveland with an enlightening report. The Cleveland meeting adopted all of the reports and thus inaugurated what has become known as the Judge Parker Program. In that way, seeds were sown out of which it was hoped growth, development and progress would come forth.

Eighteen years have passed since 1938 when the Judge Parker Program was adopted. In that year, following the inauguration of the program, committees were appointed in each state to promote its adoption. Since that time the chairmen of those committees have met annually during the meeting of the Section of Judicial Administration. Judge Parker presides over the meetings. Each state chairman reports upon the progress which has been made in the current year in his state upon the program. It is enheartening to listen to the reports. The chairman of the committee in one state shows that in his jurisdiction the rules governing appeals have been simplified and the cost of appeals has been lessened. The chairman for another state reports that recently the courts of his state have been put under an administrator. In still another the recommendations of the program for the betterment of the rules of evidence induced action by the legislature, and so on go the reports. Year by year material progress is reported.

The original Judge Parker Program, initiated in a modest way eighteen years ago, is moving forward with

the irresistible force of a great glacier. As it moves ahead, it is gathering to itself additional proposals for court improvement and thus is accumulating additional force. The volume, *Minimum Standards of Judicial Administration*, written by Chief Justice Vanderbilt, portrays in a graphic manner the great strides that have been taken since 1938. Possibly nothing which takes place during our Annual Meeting is more creditable to the high purposes of the Association than the reports of the Judge Parker chairmen. A little acorn was planted at the Cleveland meeting eighteen years ago; a mighty oak is growing from that acorn.

Editor to Readers

We note with deep regret the death of Senator John T. Hackett, a member of the Parliament of Canada, a distinguished Canadian lawyer, an Honorary Member and a long-time friend of the American Bar Association. Senator Hackett died last September at his home in Stanstead, Quebec.

Senator Hackett was a life-long friend of Canadian Prime Minister St. Laurent, although politically he was a Conservative while the Prime Minister is a Liberal.

Born in 1884, Senator Hackett lived all his life in Quebec. He was one of the most prominent men at the Canadian Bar and in his political career he was noted as an advocate of racial tolerance. He was appointed to the Canadian Senate in 1955.

Senator Hackett was made an Honorary Member of the American Bar Association in November, 1948, when he attended the Seattle Annual Meeting as the retiring President of The Canadian Bar Association.

He was graduated from McGill University and in 1909 was called to the Quebec Bar. He won a high standing at the Bar and in Parliament.

Proceedings of the Assembly

(Continued from page 1043)

he had not voted in favor of adopting the resolution. (The resolution was nevertheless reconsidered after the House of Delegates had disapproved it, and it was defeated on a second vote at the final session of the Assembly.)

The seventh resolution, introduced by Stanley N. Barnes, of Washington, D. C., was referred, with the author's consent, to the Committee on Legal Services and Procedure.

The final resolution had been offered by George R. Douglas, Jr., of Falls Church, Virginia, and it recommended a constitutional amendment reserving the police powers and other powers to the states, specifying that they should not be invaded by the United Nations Organization or the United States. On the Resolutions Committee's recommendation, this resolution was not passed.

Mr. Troutman concluded his report by saying that his Committee felt that it was imperative that some machinery be adopted so that members attending the Annual Meetings could be informed in advance of the substance of the Resolutions so that they could know whether they wished to appear before the Resolutions Committee to support or oppose them.

The meeting ended at 4:45 P.M.

Annual Dinner (Fourth Session)

■ The Annual Dinner of the Association was held in the Ballroom of the Statler Hilton, beginning at 7:30 P.M. on Thursday, August 30. President Gambrell presided.

The invocation was pronounced by Dr. Herbert R. Howard, Pastor of the Park Cities Baptist Church.

The American Bar Association Medal, highest honor in the Association's power to award, was given to Robert G. Storey, a former President of the Association and Dean of Southern Methodist University School of Law, for "the conspicuous and unselfish service" Dean Storey has rendered to the cause of American jurisprudence.

The speaker of the evening was Ambassador Henry Cabot Lodge, whose address appears elsewhere in this issue (see page 1027).

Honorary memberships in the Association were presented to Sir Reginald, Sir Edwin, Colonel Hutchison, Manuel G. Escobedo, President of the Bar Association of the Republic of Mexico, and Dr. Nazir Ahmad Khan, President of the Pakistan Bar Association.

The new officers and members of the Board of Governors were introduced, and the banquet then adjourned.

Fifth Session

■ The final session of the Assembly was held on Friday, August 31, with President Gambrell in the chair.

The Assembly voted to amend the resolution it adopted on Thursday afternoon relating to federal judicial appointments. The House of Delegates had adopted a similar amendment with minor differences, and the action of the Assembly was intended to conform its action to that of the House. (See page 1056 for the language of this resolution.)

The Assembly then voted to rescind its action on Resolution No. 6, adopted the day before, thus following the action of the House of Delegates.

New officers and members of the Board of Governors were introduced, the gavel was turned over to Mr. Maxwell, and the Annual Meeting adjourned at 10:40 A.M.

What's New in the Law

The current product of courts, departments and agencies

George Rossman • EDITOR-IN-CHARGE

Richard B. Allen • ASSISTANT

Constitutional Law . . . *female wrestlers*

■ Oregon's statutory ban against women wrestlers has been upheld by the state's Supreme Court against constitutional attacks.

A feminine grappler contended that the statute, which prohibits the licensing of anyone "other than a person of the male sex" for wrestling competition or exhibition, violated the equal protection clauses of the Federal and Oregon Constitutions.

But the Court held that it was permissible class legislation because there was a reasonable and natural basis in the wrestling field for distinctions between men and women. The Court pointed out that the differences have long been recognized as valid in the fields of labor and industry.

Another cogent reason for the act occurred to the Court. Noting that the legislature which enacted the statute was predominantly male, the Court ventured that the legislature intended "that there should be at least one island on the sea of life reserved for man that would be impregnable to the assault of woman". The Court continued:

> . . . is it any wonder that the legislative assembly took advantage of the police power of the state in its decision to halt this ever-increasing feminine encroachment upon what for ages had been considered strictly as manly arts and privileges? Was the act an unjust and unconstitutional discrimination against woman? Have her civil or political rights been unconstitutionally denied her? Under the circumstances, we think not.

(*Oregon* v. *Hunter*, Supreme Court of Oregon, July 31, 1956, Tooze, J., 300 P. 2d 455.)

Editor's Note: Virtually all the material mentioned in the above digests appears in the publications of the West Publishing Company or in The United States Law Week.

Courts . . . *disappearance of judge*

■ The Supreme Court of Florida has advised the Governor that where a circuit judge has been missing for a year, having disappeared along with his wife under circumstances indicating foul play, his judicial post may be declared vacant and filled by appointment.

The judge involved was C. E. Chillingworth, who has not been seen since the night of June 15, 1955, when he disappeared from his home near Palm Beach. The Governor informed the Court that an exhaustive search had been made, that more than $100,000 in rewards had been posted, that law enforcement officers believed the judge and his wife had been killed and that the two judges remaining in the judicial circuit involved were unable to handle an increasing caseload.

About a month after the disappearance, the Governor had requested an advisory opinion, but at that time the Court declared the Governor could not proclaim the judgeship vacant. 81 So. 2d 778. But now, the Court declared, different circumstances prevailed. The passage of a year without the jurist's reappearance and the extensive investigation of the case compelled the Court to the opinion that at most the judge had been killed and that at least his job was vacant. Because the office of circuit judge is a key position, the Court said, the administration of justice would suffer if the post continued unfilled.

The Court warned that should Judge Chillingworth reappear during his term of office, he could regain his office through mandamus by making a showing of involuntary absence.

(*Advisory Opinion to the Governor*, Supreme Court of Florida, June 21, 1956, 88 So. 2d 756.)

Criminal Law . . . *public trial*

■ Military due process of law requires that an accused be afforded a public trial, including the attendance of the press, the United States Court of Military Appeals has decided.

The Court was faced with determining the validity of an exclusionary order which had the effect of barring the public from a court martial before which the accused was charged with communicating obscene language over the telephone. The basis of the order was that the testimony would necessarily involve the alleged obscene language. While the order barred the general public, it did permit the accused to have present any person he wished, but he apparently did not exercise this privilege.

Stating generally that courts martial should be open to the public, the Court found the exclusionary order in the present case too broad and that the option given the accused to designate who might attend was not sufficient to protect his right to a public trial. To reach this conclusion, the Court had to announce a fundamental proposition that military due process encompasses the right to a public trial. The well-known military law writer, Winthrop, has said that the Sixth Amendment guarantee of a public trial is not applicable to courts martial.

But the Court asserted that there was no reason the right should not apply to military law in cases where, as in the instant case, no security or military matters were the subject of

testimony. Whatever former views might be, the Court said, Congress in enacting the Uniform Code of Military Justice "did not envision—and judicial conscience would not permit—a retreat to the ancient view that courts martial have an absolute right to close their doors to the public whenever they choose to do so."

(*U.S.* v. *Brown*, United States Court of Military Appeals, August 17, 1956, Latimer, J., 7 U.S.C.M.A. 251.)

■ In California the District Court of Appeal for the Third District has held that a trial judge's order excluding the public and press was too broad and should have been limited to the period during which the defendant testified. Although the case had become moot, the Court decided it because of the importance of the question.

The basis of the order—apparently a blanket exclusion of the public and press—was that the defendant, being tried for murder, was emotionally upset and that she could not testify freely if the public were present concerning some abnormal sexual practices which she claimed were forced upon her. The order was requested by the defendant and agreed to by the prosecution.

Several newspapers and reporters, as members of the general public, sought a writ of mandamus to compel the trial court to vacate the exclusionary order. The trial judge contended that the right to a public trial was a guarantee personal to the defendant and could be waived, as in the instant case.

But the Court held that there is a right to open criminal trials in the public generally—a right separate from the defendant's. The waiver of a public trial by a defendant, the Court said, is not sufficient to justify a trial judge in excluding the public.

It was within the inherent power of the trial court, however, to exclude the public during the defendant's testimony, the Court continued, in order to insure her a fair trial. The Court concluded that the order should have done this, but kept the remainder of the trial open.

The Court declared that the press had no greater rights than any member of the public and that freedom of the press was not involved.

(*Kirstowsky* v. *Superior Court*, California District Court of Appeals, Third District, August 8, 1956, Schottky, J., 300 P. 2d 163.)

Equity . . .
injunctions

■ An Illinois court has held that a telephone company has a cause of action and is entitled to at least a temporary injunction against the manufacturer and distributor of covers for telephone directories.

The telephone company charged that the defendants provided the company's customers with plastic directory covers containing advertising. The complaint further alleged that the defendants urged the subscriber to place their directories in the covers.

The Appellate Court of Illinois, Second District, reasoned that the telephone directories belonged to the company and that it retained constructive possession of them; they were merely loaned to the subscribers. Part of the contract between the company and each subscriber, the Court continued, were the regulations issued by the company and approved by the state commerce commission, one of which was that subscribers should not attach anything to the company's "equipment or facilities".

The Court held the directories were part of the "equipment or facilities" of the company and that the defendants were interfering with a contractual relationship between the company and its subscribers. This, the Court concluded, was a continuing trespass for which no adequate legal remedy existed, and the company was entitled a preliminary injunction on the pleadings.

(*Illinois Bell Telephone Company* v. *Miner*, Appellate Court of Illinois, Second District, July 23, 1956, Crow, J., 11 Ill. App. 2d 44, 136 N.E. 2d 1.)

Evidence . . .
secondary evidence

■ The problem of what showing must be made to lay the foundation for introduction of secondary evidence has been considered by two states. In each case there was an attempt to introduce a substitute for an original document which could not be found, but the results differ. In one case the document was last in the custody of a disinterested third party, while in the other, it was apparently last in the custody of the plaintiff's attorney.

In New Mexico the owner and lessees of a building that had blown up were suing a contracting partnership on the theory that the contractors had damaged the gas service line, allowing gas to seep into the building. The defense was that the plaintiffs had a defective gas line in the building and that the inordinate amount of gas which went through the defendants' meter in the hours before the explosion would prove it.

Unfortunately, the manager of the local gas company testified, he was unable to find the meter readings for the time in question. After making this showing, the defendants offered two witnesses who had seen the readings at the gas company office and who would say that an explosive mixture had gone through the meter just before the explosion.

The Supreme Court of New Mexico held that it was reversible error to refuse the secondary evidence of the proffered witnesses. Conceding that the offered testimony was not the best evidence of the meter readings, the Court declared that the defendants had laid a proper foundation for admission of secondary evidence by showing that they had exhausted, in good faith and to a reasonable degree, all sources of information concerning and means of discovery of the original which the nature of the case would suggest and which were accessible to them.

(*Williams* v. *Miller*, Supreme Court of New Mexico, July 25, 1956, rehearing denied August 27, 1956, Lujan, J., 300 P. 2d 480.)

■ In a New Jersey case personal representatives were attempting to show by cancelled checks that their decedent had transmitted $12,000 to the defendant. But unfortunately again, the original cancelled checks could not be produced. The plaintiffs' at-

torney testified he had sent the checks to a handwriting expert, that he had not received them back and could not find them in his office.

This testimony was not a sufficient basis, according to the Superior Court of New Jersey, Appellate Division, to permit introduction of photographic copies of the checks. The Court quoted the same general rule regarding foundation as the New Mexico Court, but it was apparently not satisfied that a thorough and diligent enough search for the originals had been made.

(*Storm* v. *Hansen*, Superior Court of New Jersey, Appellate Division, August 17, 1956, Burton, J., 124 A. 2d 601.)

Federal Tort Claims Act . . . *contaminated garbage*

■ A judgment against the United States has been affirmed by the Court of Appeals for the Eighth Circuit in a case brought under the Federal Tort Claims Act in which several of the plaintiff's cattle died after eating contaminated garbage the plaintiff purchased from a Veterans Administration hospital in South Dakota.

The plaintiff was a contract purchaser of edible garbage. One day he noticed a gray semi-liquid substance interspersed in the garbage. He thought it was wet plaster, so he emptied it in a washout in his field. The matter was really a high lead content substance which had been placed in the garbage negligently by hospital employees. The plaintiff's cattle ate the substance and seven of them died.

The Court affirmed a $2,130 judgment for the plaintiff. Applying the law of South Dakota, the Court declared that the employees' negligence in placing the poisonous substance in garbage which the Government sold as edible set in motion a chain of events from which injury might be reasonably anticipated. Therefore, the Court continued, the plaintiff's act of making the substance available to his cattle made no difference. The Court said, moreover, that the plaintiff acted with reasonable care and could not be charged with contributory negligence.

The United States contended that the garbage-buyer assumed the risk because of provisions in the standard-form contract used providing that the garbage was offered "as is" and "without recourse", the Government making "no guaranty, warranty or representation". But the Court held that these provisions could not be a defense to a tortious act such as placing poisonous matter in a foodstuff.

The contract also contained an exculpatory clause limiting the Government's liability to "refund of the purchase price". The Court stated that an "unintended over-reaching" would result from a literal interpretation of this provision, since the sale price was $5 a month for one year.

(*U.S.* v. *Kelly*, United States Court of Appeals, Eighth Circuit, August 20, 1956, Woodrough, J.)

Patent Law . . . *chocolate animals*

■ The Court of Appeals for the Third Circuit has held that a design for hollow chocolate animals is patentable, and in so doing the Court has given its judgment that the "flash of genius" test gambited by the Supreme Court in *Cuno Engineering Corporation* v. *Automatic Devices Corporation*, 314 U.S. 84, "has been laid to rest".

The Court indicated that the "flash of genius" expression may not have been intended by the Supreme Court as a test at all, but only as an attempt to find a descriptive phrasing for an elusive concept—to characterize something "new" and "original" as opposed to something which is merely an extension of existing and known art. The Court does not seem to think the 1952 amendment of §103, 35 U.S.C.A., which provides that "patentability shall not be negatived by the manner in which the invention was made", changed the law. It was rather a codification and stabilization of existing law, the Court declared.

The Court agreed that there has been a judicial tendency to expect "an indefinite 'more' of the proferred invention" and that the 1952 amendment has effected a stabilization in the field. But beyond this, the Court continued, a court is still faced with deciding upon "which side of a vague boundary line it will place the alleged invention".

In the instant case the "alleged invention", upon which a patent had been issued, was a caricature-like animal form for hollow chocolate candy. Chocolate animal figures are old, but the figures involved in the case were different. The Court preferred to test their patentability by the visual sense and, so testing, found the figures a step beyond the prior art.

Rejecting the defendant's contentions that the figures were nothing more than the work of a skillful craftsman, the Court said: "We are of the opinion that the designs in this instance disclose artistic treatment in form and configuration, creating a pleasing impression and substantially different aesthetic effect . . . they reflect originality born of inventive faculty."

One judge dissented. He thought the designs were merely reworkings of prior art into a good merchandising idea.

(*R. M. Palmer Company* v. *Luden's, Inc.*, United States Court of Appeals, Third Circuit, August 22, 1956, Kalodner, J.)

Taxation . . . *jeopardy assessments*

■ The United States District Court for the Southern District of New York has refused injunctions sought by the Communist Party and the *Daily Worker* to restrain a district director of internal revenue from proceeding under jeopardy assessments to collect amounts allegedly due for income taxes for 1951.

The Court emphasized that it could not interfere with tax collection machinery under the guise of its equitable powers. It asserted that the petitioners must use the two avenues open to all taxpayers who dispute the determination of a liability: a petition in the Tax Court or a suit for refund.

The Court conceded that some apparent exceptions to this rule have been carved out by the judiciary, but it felt that the scanty information presented in the affidavits and depo-

sitions before it did not amount to exceptional circumstances or a showing that in no case could any tax be due.

Constitutional issues were also dismissed by the Court. The Party and the *Worker* contended that the assessments were aimed at destroying them, since contributors to them would refuse to continue support on the knowledge that their financial help would be grabbed by the tax collector. But the Court ruled that no entity has a right to restrain collection of taxes on the ground that continuance of the entity is threatened by such collection.

"Those who exercise rights protected by the First Amendment to the Constitution", the Court declared, "are subject to the ordinary income and property taxes which are imposed on all."

(*Communist Party, U.S.A.* v. *Moysey* and *Publishers New Press, Inc.* v. *Moysey*, United States District Court, Southern District of New York, May 23, 1956, Levet, J., 141 F. Supp. 332 and 340.)

Taxation . . . *powers of appointment*

■ Property subject to a power of appointment created prior to October 21, 1942, may be included in the gross estate of the donee of the power if he in any manner exercises the power, regardless of whether the exercise is effective to vest the property under the laws of the state of his domicile. This is the decision of the Court of Appeals for the Third Circuit.

The Court held that under Pennsylvania law the power was exercised by a short will, which in addition to appointing executors, read:

> I leave all my property to my sons who shall survive me, their heirs and assigns forever.

The executors contended that this was not an "exercise" of the power of appointment because it ran in favor of the same persons in whom the property would have vested under the will of the original testator—the donor of the power—in the absence of any "exercise".

But the Court ruled that under §811 (f) of the 1939 Code, as amended by §402 of the Internal Revenue Act of 1942 and §811 (f) (1) of the Powers of Appointment Act of 1951, the element of "passing" had been eliminated in considering the exercise of powers of appointment. As to powers created before October 21, 1942, the Court said, the only requirements are that the donee possessed the power and exercised it, and it is immaterial whether the exercise is effective to pass title.

(*Keating* v. *Mayer*, United States Court of Appeals, Third Circuit, September 7, 1956, Kalodner, J.)

Unfair Competition . . . *Santa Claus*

■ No one owns jolly old Santa Claus, but one business in an area may appropriate the St. Nick symbols so that another business in the same area is guilty of unfair competition if it uses them similarly, according to the New York Supreme Court, Appellate Division, Third Department.

The case involved establishments in the Adirondack region. The plaintiff opened "Santa's Workshop" in 1949. It is a specially designed village of story-book houses and characters, complete with a live Santa and a post-office named North Pole, New York. In 1950 the defendant, who had operated fur farms in the area for several years, commenced calling his place "Santa's Friendly Animals", and in 1952 he changed his name to "St. Nick's Animals".

This, the Court said, was unfair competition entitling the plaintiff to an injunction. Conceding that the legend and symbol of Santa Claus are in the public domain, the Court said: "But where one business man has developed a special use of a word or symbol that has been open to anyone to use, a competitor may not unfairly appropriate the same concept to sow confusion from which he reaps a profit." The Court did, however, cut the damages award from $125,000 to $35,000.

One judge dissented on the ground that there were marked distinctions between the two businesses and their advertising. He saw no reason to give the plaintiff a monopoly on Santa Claus in the Adirondack area simply because he had begun to use him a few months before the defendant.

(*Santa's Workshop, Inc.* v. *Sterling*, New York Supreme Court, Appellate Division, Third Department, July 25, 1956, Bergan, J., 2 App. Div. 2d 262. 153 N.Y.S. 2d 839.)

Verdicts . . . *amount of damages*

■ Over the objection of one judge, the Court of Appeals for the Second Circuit has applied the rule that where money is paid for a release the amount paid should be deducted from any amount thereafter recovered by the releasor.

The administrator of a decedent's estate, suing under the Federal Employers' Liability Act, had executed a release for $2,500. She claimed the release had been unfairly procured. At her request the jury was instructed that if it found "that the purported release in this case is invalid and of no force and effect . . . you will disregard the purported release in your consideration of this case". The jury also was instructed on the measure of damages. It returned a verdict for $5,000.

The Court said the question was one of interpretation of the verdict: did the jury award $5,000 damages including the release payment, or $5,000 in addition to it? In view of the instruction to disregard the release, the Court held that the entire award was $5,000 and that it was proper to credit the defendant's $2,500 payment toward the judgment.

The dissenter agreed with this disposition of the problem for an ordinary case, but he thought that it should not apply in a case in which the jury had heard evidence of the amount paid for the release and could be assumed to have taken that amount into consideration.

(*O'Tell* v. *New York, New Haven and Hartford Railroad Company*, United States Court of Appeals, Second Circuit, September 5, 1956, Hincks, J.)

Wills . . . *bequest to hospital*

■ A bequest by a New York testator to a Scottish hospital is not defeated

by the change effected by the nationalization of medicine in Scotland, the New York Supreme Court's Appellate Division, First Department, has ruled.

The testator's will, executed in 1935, left one third of her estate to the hospital, subject to a life benefit in her sister and with a power of appointment in the sister. The testator died in 1938. The life beneficiary released the power of appointment in 1942 and died in 1950. Under these circumstances, the Court held, the gift vested upon the death of the testator.

After examining the National Health Service (Scotland) Act of 1947, the Court asserted that the hospital continued to operate the same facilities after nationalization as before. The Court found, moreover, that the Act simply vested the property in a new board of trustees and gave it specific authority to operate existing trust funds and accept new ones. While the particular voluntary association formerly operating the hospital ceased to exist, the Court explained, the same physical facilities serving the same persons continued. This, it concluded, was the object served by the testator's bequest.

The Court also noted that British courts have had no trouble vesting similar charitable gifts despite nationalization.

(*Brett* v. *Gardner*, New York Supreme Court, Appellate Division, First Department, June 5, 1956, Bergan, J.)

Wills . . . *cy pres*

■ A New York court has applied the *cy pres* doctrine to vest a charitable gift in a tuberculosis-research organization, although the recipient no longer operates a tuberculosis sanitarium.

At the time the will was executed in 1929 the recipient maintained a sanitarium with a patient census of about 210. The testator provided that the gift should be used to build a cottage "for patients resorting to said sanitarium". But by the time the gift vested in 1954, treatment of tuberculosis had advanced to the point that the recipient no longer treated patients, but rather devoted its assets to research in the field of respiratory diseases.

The Supreme Court of New York County held that the gift did not lapse and that the will displayed a sufficient charitable intent to justify application of the *cy pres* doctrine. The Court declared that the specific object of the will—the building of a cottage—could not be carried out because of the changed circumstances, but it directed that the gift be paid over to the recipient "to receive the same as a memorial endowment fund . . . to use only the income for the benefit of persons suffering from respiratory or other similar diseases".

(*Matter of Kilbreth*, New York Supreme Court, New York County, August 24, 1956, Levy, J.)

Workmen's Compensation . . . *coming-and-going*

■ In a coming-and-going workmen's compensation case, the Supreme Court of Minnesota has held that injuries sustained by a bus driver on his way home from work were not compensable.

The employee's union had a contract with the transit company providing an extra forty minutes compensation when a driver's run either commenced or ended at a point away from the garage. The contract did not cover a situation in which the run both commenced and ended at a relief point distant from the garage, and this is the type of run in which the claimant in the instant case was involved. In practice, however, the employer had paid one-way traveltime in those cases.

The employee was injured in an automobile accident a few minutes after ending a run at a relief point. He contended that the case should not be governed strictly by the union contract and that he was actually engaged in regularly paid transportation time when the accident occurred.

But the Court held that there was no evidence of an express or implied contract for the employer to pay traveltime under the circumstances of the instant case. The true test, the Court declared, was whether the employee was at the time of the injury at a place where and during the time when services were required to be performed under an employment contract.

(*Hughes* v. *Duluth-Superior Transit Company*, Supreme Court of Minnesota, July 27, 1956, Murphy, J., 78 N.W. 2d 56.)

What's Happened Since . . .

■ On May 31, 1956, the New York Court of Appeals (1 N.Y. 2d 342, 153 N.Y.S. 2d 1, 135 N.E. 2d 553) affirmed the decision of the Supreme Court, Appellate Division, First Department, in *Vanderbilt* v. *Vanderbilt*, 147 N.Y.S. 2d 125 (42 A.B.A.J. 353; April, 1956), finding constitutional a 1953 New York statute which permits a court in a matrimonial action to direct maintenance for a wife "as justice may require", when the court is otherwise barred from granting a divorce, separation or annulment because the husband has obtained previously a divorce or annulment in an action in which personal jurisdiction of the wife was not obtained.

■ On August 29, 1956, the Court of Appeals for the Second Circuit affirmed the decision of the Tax Court of the United States in *Commissioner* v. *Gross*, 23 T. C. 756 (41 A.B.A.J. 360; April, 1955), leaving in effect a decision that so-called "windfall profits" arising to builders who received proceeds of Government-insured mortgages in excess of the cost of the construction of housing projects may be taxed as a capital gain rather than ordinary income.

Proceedings of the House of Delegates:

79th Annual Meeting, Dallas, Texas

■ **As is our custom we publish in this issue a complete account of the proceedings of the House of Delegates of the Association during the 79th Annual Meeting of the Association in Dallas, Texas, held August 27-31, 1956. The House held four sessions during the week of the meeting, summaries of which appear on the following pages. The text is given of all resolutions adopted by the House (except for a series of highly technical resolutions recommending changes in the 1954 Internal Revenue Code).**

At its first session, the House elected officers of the Association for the year 1956-1957 and heard the reports of the Board of Elections, the Treasurer, the Budget Committee, the President and the Board of Governors on the proposal to create a Section of Negligence and Workmen's Compensation Law. The House also considered the reports of the Section of Insurance Law, the Committee on Commerce, the Committee on Legal Services and Procedure, the Committee on Jurisprudence and Law Reform, the Committee on Communist Tactics, Strategy and Objectives, the Committee on Disciplinary Procedures, the Committee on Divorce, Marriage Laws and Family Courts, the Committee on Professional Ethics and Grievances, the Committee on Individual Rights as Affected by National Security, and the Committee on Solicitation and Handling of Personal Injury Claims.

John D. Randall
Chairman of House of Delegates
1954 - 1956

First Session

■ The first session of the House of Delegates of the American Bar Association during the 79th Annual Meeting of the Association was called to order at 2:00 o'clock on the afternoon of Monday, August 27, in the Junior Ballroom of the Statler Hilton Hotel in Dallas, Texas. The Chairman of the House, John D. Randall, of Cedar Rapids, Iowa, presided. This was the twentieth anniversary meeting of the House, which was formed in Boston in 1936 when the present American Bar Association Constitution was adopted.

The roll was called by Joseph D. Calhoun, of Media, Pennsylvania, the Assistant Secretary.

Credentials and Admissions Committee

The report of the Committee on Credentials and Admissions was given by the Committee Chairman, Glenn M. Coulter, of Detroit, Michigan. The Committee reported that it had approved the roster as read during the roll call and pointed out that the increase of membership and the growth of lawyer population were presenting new problems as to the size of the House of Delegates. Mr. Coulter said that the Committee was studying the situation and might have recommendations later for keeping the membership of the House at a workable size. He then introduced the nine new members of the House who received applause by way of welcome. The new members were Judge P. Warren Green, of Delaware; James G. Thomas, of Illinois; Jerome S. Weiss, of Illinois; Robinson Verrill, of Maine; Judge Augustus T. Seymour, of New Mexico; Leonard J. Matteson, of New York; Louis Poisson, of North Carolina; William Rosenberger, Jr., of Virginia; and Alfred M. Pence, of Wyoming. The House then voted to adopt the Committee's report.

On motion of the Secretary of the Association, Joseph D. Stecher, of Toledo, Ohio, the House voted to approve the record of its February

meeting in Chicago.

On motion of Charles S. Rhyne, of Washington, D. C., the final calendar of the House was adopted as the order of the day.

The members of the House stood in silent tribute to Floyd W. Beutler, of New Mexico, John J. Mahon, of Maine, and H. Glenn Kinsley, of Wyoming, members of the House who had died since its last meeting. Chairman Randall asked the Committee on Draft to prepare a suitable memorial resolution for the three deceased members.

In recognition of the fact that this was the twentieth anniversary of the House, Chairman Randall had all the past Chairmen of the House come forward. There were six past chairmen present: Thomas B. Gay, of Richmond, Virginia (Chairman from 1938 to 1941); Tappan Gregory, of Chicago (1944-1946); Howard L. Barkdull, of Cleveland, Ohio (1946-1948); James R. Morford, of Wilmington, Delaware (1948-1950); Roy E. Willy, of Sioux Falls, South Dakota (1950-1952), and David F. Maxwell, of Philadelphia, Pennsylvania (1952-1954). The first Chairman of the House, George Maurice Morris, of Washington, D. C., died in 1954, and the third Chairman, Guy Richards Crump, of Los Angeles, California, was not present.

Secretary Stecher then announced that the following had been nominated by the State Delegates for office in the Association for terms beginning at the adjournment of the Annual Meeting: *President,* David F. Maxwell, of Philadelphia, Pennsylvania; *Chairman of the House of Delegates,* Charles S. Rhyne, of Washington, D. C.; *Secretary,* Joseph D. Stecher, of Toledo, Ohio; *Treasurer,* Harold H. Bredell, of Indianapolis, Indiana, the last two to succeed themselves. Mr. Stecher announced that the following had been nominated for three-year terms on the Board of Governors; *Fourth Circuit,* Douglas McKay, of Charleston, South Carolina; *Seventh Circuit,* George S. Geffs, of Janesville, Wisconsin; and *Eighth Circuit,* Richmond C. Coburn, of St. Louis, Missouri.

On motion of Franklin Riter, of Salt Lake City, Utah, the nominees were elected by acclamation.

Board of Elections

The report of the Board of Elections was delivered by William P. MacCracken, Jr., of Washington, D. C., in the absence of the Board's Chairman, Judge Edward T. Fairchild, of Madison, Wisconsin. Mr. MacCracken reported on the elections for State Delegates, the results of which were published in the August issue of the JOURNAL. He also pointed out that the Board of Elections had faced two unusual situations this year due to death. In one case, the death of the only candidate for State Delegate from one state occurred shortly before the deadline for filing nominating petitions and the Board had sent a letter to all members in the affected state so that the names of two candidates did appear on the ballot. In the other case, the only candidate died after the mailing of the ballots. Here, the Board declared the member who received the largest number of write-in votes elected, Mr. MacCracken reported.

Mr. MacCracken also pointed out that the Chairman of the Board, Judge Fairchild, Chief Justice of the Supreme Court of Wisconsin, was completing twenty years of service as Chairman of the Board.

At the suggestion of Secretary Stecher, the members of the House arose and applauded in appreciation of the many years of faithful service of both Judge Fairchild and Mr. MacCracken, who had also served twenty years on the Board.

The chair then called for nominations for a new member of the Committee on Scope and Correlation, one new member of which is elected by the House each year for a five-year term. Allan H. W. Higgins, of Boston, Massachusetts, was the only man nominated. The election took place the following Wednesday.

The Treasurer's Report

Harold H. Bredell, of Indianapolis, Indiana, then gave the Treasurer's report. Mr. Bredell declared that the past year had been satisfactory from the financial point of view. He said that the income for the current fiscal year would not be much greater than for the past year in spite of the increase in Association membership. This was because most of the new memberships were processed in the closing months of the fiscal year, and the bulk of income from their dues is credited to the present fiscal year. Mr. Bredell noted that the Association now has accumulated fund balances of over a million dollars and the Association and Foundation are now housed in a two-million-dollar structure that is debt free.

Budget Committee

Herbert G. Nilles, of Fargo, North Dakota, then reported for the Budget Committee. He said that the actual budget income for the year just ended amounted to $661,000, while the tentative budget for the current fiscal year is $657,000 as compared with appropriations of some $716,000—in other words, this year's funds are overappropriated by some $90,000. Mr. Nilles said that there was no cause for alarm, but he urged economy on all chairmen of Sections and Committees.

The President's Report

President E. Smythe Gambrell, of Atlanta, Georgia, then delivered the President's report, in which he mentioned, among other things, the successful membership drive; the publication of an annual summary of Association work, to be sent to all members; the group life insurance program; and the efforts to secure passage of the Jenkins-Keogh Bill, which would allow self-employed taxpayers to defer payment of taxes on a portion of their income set aside for retirement. Mr. Gambrell announced the appointment of Joseph D. Stecher as Executive Director, calling the success in persuading Mr. Stecher to accept the post "the best thing I ever tried to do for this Association".

Mr. Gambrell also reported as President of the American Bar

Foundation, mentioning in particular the survey of the administration of criminal justice, the study of the Canons of Professional Ethics which is well under way, and the annotation of the Model Business Corporation Act and the Non-Profit Corporation Act. He concluded with a short report on his visit to the Soviet Union, just prior to the Annual Meeting.

Board of Governors

One of the liveliest controversies in recent years in the Association has centered around the proposal to create a Section of Negligence and Workmen's Compensation Law. The proposal to create such a Section was published in the July issue of the JOURNAL. Secretary Stecher, reporting for the Board of Governors on the latest developments, said that since the publication of the announcement of the proposal had appeared in the JOURNAL, the Board had received hundreds of communications expressing widely divergent views. Accordingly, the Board had considered the matter and recommended to the House that the proposal be recommitted to the Board for further hearing and study.

George E. Beechwood, of Philadelphia, Pennsylvania, Delegate of the Section of Insurance Law, speaking on the proposal to recommit, urged the House to approve the recommitment to the Board of Governors. Martin J. Dinkelspiel, of San Francisco, California, Chairman of the Committee on Scope and Correlation, said that his Committee likewise favored recommittal.

The House voted to recommit the proposal.

Section of Insurance Law

Mr. Beechwood then presented the report of the Insurance Law Section as a special order of business. He said that the Section proposed to change its name to "Section of Insurance, Negligence and Compensation Law" and to amend the purpose clause of its by-laws in accordance with the change of name. He moved that the House approve this amendment of the Section's by-laws.

Mr. Riter, of Utah, declared that such approval might embarrass the Board of Governors in considering the proposal to create a Section of Negligence and Workmen's Compensation Law and accordingly moved that the change in the Section's by-laws also be referred to the Board of Governors.

Chairman Randall ruled that such a referral was necessary anyhow, because of Article X, Section 3, of the Association's Constitution which requires approval of Section by-laws or amendments to Section by-laws by the House of Delegates "after a report by the Board of Governors".

Mr. Beechwood said that his Section had spent six months going over the matter and objected to "another approach" "at the last moment". He declared that he wanted to have the merits of a Section of Negligence Law discussed and voted upon. He moved for a reconsideration of the proposal to recommit the creation of such a Section.

The motion to reconsider was lost, and the House turned to the next item on its calendar.

Committee on Commerce

Benjamin Wham, of Chicago, Illinois, Chairman of the Committee on Commerce, reported for that Committee. The Committee originally had three resolutions, but Mr. Wham withdrew two of them. The first, he explained, would have approved the natural gas bill with appropriate amendments to meet President Eisenhower's veto objections. He withdrew the resolution because both the Public Utility Law Section and the Mineral Law Section were interested in the bill and wanted more time to study it. The other withdrawn resolution opposed the Gore Bill for government construction of nuclear power facilities for civilian and other uses. The resolution was withdrawn because the Gore Bill had been first watered down and then failed to pass in Congress, Mr. Wham explained. The Committee wanted to see what new bill would be introduced in the 85th Congress before it asked the House of Delegates to act.

That left only the Committee's second resolution, which was as follows:

> RESOLVED, That the American Bar Association, in addition to approving the Smith Bill, H.R. 3, and its companion bill, S. 3143 (84th Congress, 2d Sess.), (both for the purpose of preventing acts of Congress from being construed as having the intent to pre-empt fields in which such acts operate to the exclusion of all state laws on the same subject unless such acts contain an express provision to that effect), recommends a change in the rules of each House of Congress to require that a committee reporting a bill to Congress report specifically on whether there are state laws dealing with the subject of the bill and the extent, if any, to which the bill is intended to affect those laws, and also whether it is intended that the bill shall preclude the future enactment of state legislation in the field.

Mr. Wham recalled that the House had approved H.R. 3 at its 1955 Annual Meeting. This was felt to be not enough, he explained, and hence the present proposal to provide that the rules of Congress require a committee to state specifically the effect upon state laws of any bill reported out. The procedure would be helpful both to Congress and the courts, Mr. Wham said.

On his motion, the House voted to adopt the resolution.

Legal Services and Procedure

Ashley Sellers, of Washington, D. C., then reported for the Committee on Legal Services and Procedure, of which he is the Chairman. Mr. Sellers said that his Committee had set up five advisory groups to assist it in drafting legislation to implement the resolutions proposed by the Committee last February and approved by the House. The advisory groups have been hard at work and the drafting process was expected to be finished this fall so that appropriate legislation will be ready for submission to Congress when it reconvenes in January.

On his motion, the House voted to continue the Committee.

Jurisprudence and Law Reform

The report of the Committee on Jurisprudence and Law Reform, delivered by Committee Chairman William Logan Martin, of Birmingham, Alabama, dealt with two matters which were holdovers from previous meetings of the House of Delegates. The first was a proposal to amend the United States Constitution to permit direct amendment of the Constitution by the states without resort to Congress or a federal convention. This proposal had been originally proposed by John B. Ebenger, of Klamath Falls, Oregon, and referred to the Jurisprudence and Law Reform Committee. Mr. Martin said that Mr. Ebenger had requested that the proposal be withdrawn from consideration. On his motion, the House voted that it be so withdrawn.

The other matter presented by Mr. Martin was a progress report on the problem of federal pre-emption, just mentioned by Mr. Wham. The House had approved a resolution to the effect that any act passed by Congress should state whether it was intended to occupy the entire field in which there might be state laws as well. In considering the bill embodying this proposal, the House of Representatives had amended it by limiting it to the field of sedition, sabotage and offenses in the military and the navy, Mr. Martin reported, while the Senate had reported the bill with only a minor change in wording. Both bills were left on the calendars of the Congress when it adjourned.

American Citizenship

Judge Walter M. Bastian, of Washington, D. C., then reported for the Committee on American Citizenship, of which he is the Chairman. His report required no action by the House; Judge Bastian called the attention of the delegates to the written report and urged them to read it.

Communist Tactics

The report of the Committee on Communist Tactics, Strategy and Objectives was delivered by Senator Herbert R. O'Conor, of Baltimore, Maryland, the Chairman of the Committee. The Committee's only recommendation, that it be continued, was approved without debate. Senator O'Conor declared that, while there may have been a change in tactics on the part of the Communists, "Communism in any garb is still Communism and represents a menace to mankind and to world peace". He said that the recent indictment of Stalin by Kruschev is a confession by the Communist leaders about which the organized Bar should advise the American people, that Congress should print and make available copies of this confession, so that every citizen could read it and understand its true character, and that the American people must be made aware that until the peoples of the enslaved nations remove their leaders, the free world will have to deal with those nations through leaders who are proven criminals.

Disciplinary Procedures

Judge Orie L. Phillips, of Denver, Colorado, then delivered the report of the Committee on Disciplinary Procedures, of which he is the chairman. He moved the adoption of the following recommendation, which was approved without debate.

> That the House of Delegates direct each state delegate, in cooperation with the delegate from each bar association: (a) To ascertain whether in their respective jurisdictions original and exclusive jurisdiction in all matters involving admission of persons to practice law and to discipline for cause all such persons is vested in the highest court in their respective states and if such jurisdiction is not so vested to initiate appropriate action to cause such jurisdiction to be vested in the highest court of their respective states, either by rule of court or appropriate amendments to existing laws, where the latter is necessary; and (b) where adequate records of disciplinary procedures are not kept in their respective states, to undertake to have the highest court of their respective states adopt Rule 3.05 of the Model Rules for Disciplinary Procedures.

Divorce, Marriage Laws

Secretary Stecher then moved adoption of the following in the absence of a representative from the Committee on Divorce, Marriage Laws and Family Courts:

> That the Committee be continued; provided that if and when a Section of Family Law is established, the Committee be discharged.

The recommendation was adopted without debate.

Professional Ethics

Henry S. Drinker, of Philadelphia, Pennsylvania, then reported for the Committee on Professional Ethics and Grievances, of which he is the Chairman. Mr. Drinker made an oral report which required no action by the House. He said that the Committee has considered whether it should make recommendations for further amendment of the Canons of Ethics, and has decided that although a number of the Canons merit clarification, it was the Committee's opinion that no general revision was necessary or advisable. The Committee continues to receive large numbers of requests for construction of the Canons and there have been an increasing number of inquiries from state and local bar associations, Mr. Drinker reported. There have been few complaints about unethical conduct, and many of these were from people who were probably deranged. The Committee has issued only two formal opinions in the past year, the policy being to limit such opinions to important new matters.

Individual Rights, National Security

Whitney North Seymour, of New York City, reporting as Chairman of the Committee on Individual Rights as Affected by National Security, moved that the Committee be continued and his motion was carried without debate. Mr. Seymour proposed two resolutions, the first of which was adopted without debate. It was the result of the recent *Bigelow* incident in New Jersey, where the New Jersey legislature denied

confirmation of a New Jersey lawyer appointed as a trustee of the state university on the ground that he had represented a witness who claimed his privilege under the Fifth Amendment. Mr. Seymour said that, while the lawyer, who was attacked for his defense of his client, was finally confirmed after all the bar associations in the area had rallied to his support, the episode could not have happened at all if public understanding of the duty of lawyers were adequate. The resolution was as follows:

RESOLVED, That the American Bar Association urges that its 1953 resolution on the duty of the Bar in connection with representations of unpopular defendants and related matters should be the subject of affirmative educational measures by all state and local bar associations, and that as a part thereof, emphasis should be placed upon the importance to the public and the administration of justice of an independent bar and its responsibilities including protection of the attorney-client privilege.

Mr. Seymour's other resolution dealt with a situation in Tennessee where a federal court directed a lawyer to produce for the income tax authorities his working papers, based upon information received from his client and his testimony as to his conversations with his client. Mr. Seymour admitted that his Committee had only a tenuous connection with such a problem, but felt that the whole question of a free and independent Bar is a part of the problem of individual rights and had accordingly called the matter to the attention of the House. He then offered the following resolution:

RESOLVED, That the Board of Governors be directed to authorize the *Bill of Rights Committee* to investigate the case of *Secretary of the Treasury* v. *Taylor Malone, Jr.*, and related cases now pending on appeal before the Court of Appeals of the Sixth Circuit, and, in its discretion, to file a brief amicus curiae therein on behalf of the Association, subject to approval of contents thereof by a subcommittee of the Board of Governors.

Mr. Haywood, of North Carolina, moved that the words "Bill of Rights Committee" (italicized above) be substituted for "Council of the Section of Taxation", which was the way Mr. Seymour's resolution read at first. Mr. Seymour accepted that amendment.

Secretary Stecher said that the Board of Governors had felt that it was appropriate that the matter go to the Tax Section since a taxation case was involved, but had not given consideration to a reference to the Bill of Rights Committee.

Thomas N. Tarleau, of New York, New York, Section Delegate of the Taxation Section, said that, while the Section was willing to do what the Board wanted, the problems involved were the protection of the lawyer-client privilege and the privilege against self-incrimination, neither of which fell within the peculiar competence of the Section.

Chairman Randall submitted the resolution as authorizing the Bill of Rights Committee to investigate the matter, and the resolution was passed in that form.

The House also voted to continue the Committee.

Personal Injury Claims

The House then turned to the report of the Committee on Investigation, Solicitation and Handling of Personal Injury Claims, delivered by its Chairman, Paul W. Updegraff, of Norman, Oklahoma. Mr. Updegraff first offered the following for adoption by the House.

The Special Committee on Investigation, Solicitation and Handling of Personal Injury Claims informs the Board of Governors and the House of Delegates of the American Bar Association that there is pending in the Supreme Court of the State of Illinois a suit for declaratory judgment in the matter of the petition of the Brotherhood of Railroad Trainmen and W. P. Kennedy, President and Member thereof, wherein by declaratory judgment they seek the answer to the following question:

May the Brotherhood of Railroad Trainmen, a labor union whose members are engaged in intrastate and interstate commerce, provide a staff of counsel, urge its members to avail themselves of the services of such counsel in grievances and claims arising out of railroad employment, and compensate its representatives for their time, effort and expenses in recommending and urging members of the Brotherhood to avail themselves of such services?

We recommend that the American Bar Association file a brief amicus curiae in said cause.

Secretary Stecher pointed out that adoption of this resolution was unnecessary since the Board of Governors had already authorized the Committee on Unauthorized Practice to file a brief in the case.

Karl C. Williams, of Rockford, Illinois, said that the Supreme Court of Illinois has appointed a special commissioner to investigate the practices of the Railway Trainmen and that it was better, if the Board's action was broad enough to cover it, to authorize the Committee on Unauthorized Practice to take part in that investigation.

Mr. Stecher replied that the Board's understanding was that the Committee would fully cover all phases of the investigation.

Mr. Updegraff then offered his second resolution, which was this:

We recommend that the National Conference of Commissioners on Uniform State Laws be requested to study the Anti-Solicitation statutes of the various states for the purpose of drafting a suitable Uniform Anti-Solicitation statute.

Mr. Updegraff said that there are a few states that have anti-solicitation statutes, but the statutes are by no means uniform and the purpose was to provide some degree of uniformity.

On motion of Secretary Stecher, for the Board of Governors, the resolution was referred to the National Conference for investigation as to the advisability of such a statute rather than as a recommendation that such a statute be drafted. This substitute had Mr. Updegraff's approval, and it was carried.

Mr. Updegraff withdrew his third resolution, which would have increased the membership of the Committee to seven.

The fourth and final recommendation of the Committee, that it be continued, was adopted without debate.

The House then recessed at 4:45 P.M.

Second Session

■ At the second session, the House heard the reports of the Committee on Retirement Benefits, the Committee on Federal Judiciary, the Committee on Traffic Court Program and the Committee on Customs Law. Perhaps this session was the most interesting of the entire meeting, for extended debate took place over the report of the Committee on Amendment of Rule 71-A and over four proposals to amend the Constitution and By-laws of the Association; part of the latter debate was continued in the third session.

■ The House of Delegates reconvened for its second session at 9:30 on the morning of Wednesday, August 29, with Chairman John D. Randall presiding.

President Gambrell presented four distinguished guests of the Association to the House: Sir Reginald Edward Manningham-Buller, the Attorney General of England, Sir Edwin Savory Herbert, President of the Law Society of England, Colonel Paul P. Hutchison, President of the Canadian Bar Association, and Nazir Ahmad Khan, President of the Pakistan Bar Association.

Dean F. D. G. Ribble, of the Law School of the University of Virginia, then spoke briefly to the House, calling their attention to the Woodrow Wilson Centennial Celebration and asking them to participate in the celebration of the hundredth anniversary of the birth of President Wilson.

The House then elected Allan H. W. Higgins, of Boston, Massachusetts, to the Committee on Scope and Correlation. Mr. Higgins had been nominated at the first session.

Retirement Benefits Committee

Richmond C. Coburn, of St. Louis, Missouri, delivered the report of the Committee on Retirement Benefits in the absence of Committee Chairman George Roberts, of New York City. Mr. Coburn reported on the Committee's work in attempting to secure passage of the Jenkins-Keogh Bill, which would permit self-employed persons to set aside part of their income for retirement without paying income taxes on the fund until after retirement. Mr. Coburn said that the bill had not been reported out by the House Ways and Means Committee and he asked all the members of the House of Delegates to familiarize themselves with the legislation and support its passage. A similar piece of legislation has been enacted by the English Parliament, he pointed out. The only action required of the House of Delegates was to continue the Committee, which was carried without further debate.

David F. Maxwell, the President-Elect of the Association, addressed the House briefly urging the members to support the Jenkins-Keogh Bill, declaring that he intended to make this a major project of his term. He asked the delegates to give him the names of two lawyers in their own states who would be able to do the most to secure passage of the bill. "We are going to have a committee in every state and in every congressional district" he declared. "I beseech your help in this major project."

Federal Judiciary Committee

Ben R. Miller, of Baton Rouge, Louisiana, reported for the Committee on Federal Judiciary, of which he is a member. He reported that the Committee had tried unsuccessfully to obtain planks in the platforms of the major political parties pledging non-political selection of federal judges. Mr. Miller said that it was not so much a question of obtaining impartial judges, for most lawyers appointed throw off partisan ties and prejudices upon the Bench, as of guaranteeing public confidence in the courts. He offered the following resolution, which was adopted:

WHEREAS, a qualified and independent judiciary is indispensable to the maintenance of a co-ordinated branch of the government under our Constitution and to the protection of the freedom and rights of every individual; be it

RESOLVED, That the incoming President of the United States be urged to nominate for appointment to judicial office only the best qualified lawyers or judges available, without regard to their political affiliations; be it further

RESOLVED, That we commend the preliminary steps that have been taken by the Attorneys General of the United States for the past several years in procuring the assistance of the American Bar Association through the Standing Committee on the Federal Judiciary for determination of the competence of proposed nominees and urge the continuance and implementation of this procedure; be it further

RESOLVED, That the Secretary of the Association forward copies of this resolution to the incoming President of the United States and to his appointee as Attorney General of the United States.

Rights of the Mentally Ill

Secretary Stecher than moved adoption of the following in the absence of members of the Committee on Rights of the Mentally Ill:

1. That the Special Committee on the Rights of the Mentally Ill be continued.

2. That the Committee be authorized to continue to advise with the appropriate officers and committees of the Association and of the Bar Foundation, and to co-operate with the Joint Commission on Mental Illness and Health and other agencies which may be set up for research projects into the field of mental illness and health.

In moving adoption of the resolutions, Secretary Stecher pointed out that the American Bar Foundation has already approved a research project in this field. The resolu-

tions were adopted without debate.

On Mr. Stecher's motion, the House voted to continue the Committee To Study Implementing Report of Survey of Bar Examiners and Related Subjects. (This action was rescinded at a later session of the House. See page 1066).

Traffic Court Program

Albert B. Houghton, of Milwaukee, Wisconsin, Chairman of the Committee on Traffic Court Program, said that his committee had received reports from 1197 cities in 1955, showing that over 20,000,000 cases were processed by traffic courts in those cities. Most people form their impression of justice from such cases, he pointed out, and the activities of his Committee had been concentrated on improving the administration of those courts. Films are being prepared under the Committee's supervision, he announced, with funds supplied by the Automobile Manufacturers Association and the Ford Motor Company. On his motion the House voted to continue the committee.

Amendment of Rule 71-A

John C. Satterfield, of Jackson, Mississippi, reported as Chairman of the Committee on Amendment of Rule 71-A of the Federal Rules of Civil Procedure. That Committee is a Special Committee charged with the responsibility of securing a change in Rule 71-A of the Federal Rules so as to restore the right to trial by jury in land condemnation suits. The present rule leaves the question of a jury trial to the discretion of the trial judge. The question has been vigorously debated several times in the House of Delegates and the report of the Committee stirred up a debate again at this session.

Chairman Satterfield moved adoption of the following resolution:

> That the Special Committee on Amendment of Rule 71-A of Federal Rules of Civil Procedure promulgated by the Supreme Court be continued for the succeeding Association year and be authorized to urge an amendment of Rule 71-A so as to permit the defendant to demand a jury as a matter of right thereunder and be further authorized to present the views of the Association to the Advisory Committee on Federal Rules and the Supreme Court of the United States.

Mr. Satterfield explained that the original language of this resolution had contained the following phrase at the end of the resolution "and, if such amendment is not thus obtained, to the appropriate committees of Congress". The phrase was deleted at the suggestion of the Board of Governors. Mr. Satterfield explained that his Committee had not receded from its earlier position that it was proper to attempt to secure congressional action on the amendment of Rule 71-A, but the Committee also felt that it was entirely appropriate to obtain the amendment through the Court itself.

Godfrey L. Munter, of Washington, D. C., a member of the Committee, said that he and another member disagreed with the Committee's report. He took the position that the Government as well as the defendant in a land condemnation proceeding should have the right to a jury trial. "The Government is just a litigant like anybody else" he said. He moved to amend the resolution by changing the word "defendant" to "either party".

Robert T. Barton, Jr., of Richmond, Virginia, speaking in opposition to Judge Munter's proposed amendment, declared that it worked an injustice on the landowner if the Government had the right to demand a jury trial, since the landowner might have to come many miles to obtain an evaluation of the land and such a landowner might much prefer to have the valuation assessed by commissioners. Mr. Barton also declared that it was important to keep the rule-making power in the courts and not seek a revision of the Federal Rules by Congress.

The House then voted down Judge Munter's amendment and adopted the Committee's resolution as offered.

James D. Carpenter, of Jersey City, New Jersey, introduced Styrbjorn Garde, a lawyer from Stockholm, Sweden, son of the Chief Justice of Sweden, who received the greetings of the House.

Amendment of Constitution, By-Laws

Most of the rest of the time of this second session was devoted to consideration of three amendments to the Constitution and By-laws of the Association. Chairman Rhyne, of the Rules and Calendar Committee, who sponsored the first proposals, explained that he was withdrawing the Committee's first recommendation. This recommendation, to establish a Standing Committee on Constitutional Law, was withdrawn to give the Committee time to revise the statement of the new Committee's jurisdiction in the light of many suggestions received after notice of the proposed amendment was published in the JOURNAL.

The purport of the Committee's second amendment was to give virtual life membership in the House of Delegates to all former Secretaries and Treasurers of the Association who have served more than four years in such a capacity. Mr. Rhyne pointed out that the Secretary and Treasurer acquire an intimate knowledge of the affairs of the Association and the intention was to harness this knowledge for the continued benefit of the Association. A similar provision is already in effect as to former Presidents and Chairmen of the House of Delegates.

The proposal, which was adopted without further debate, reads as follows:

> Amend the Constitution, Article VI, Section 3, by inserting in line 32 after the words "the House of Delegates" the words "and also former Secretaries and Treasurers of the Association with four years or more of service in such capacity", so that present lines 31 to 37 will read:
>
> Former Presidents of the American Bar Association, former Chairmen of the House of Delegates and also former Secretaries and Treasurers of the Association with four years or more of service in such capacity,

who register in attendance at any annual meeting of the Association by 12 o'clock noon on the opening day thereof, the membership of such former officers becoming effective upon registration and continuing until the opening of the next annual meeting.

The next proposed amendment to the Association's Constitution was proposed by Arthur VD. Chamberlain, of Rochester, New York, and was as follows:

Amend Article VI, Section 6 of the Constitution by eliminating therefrom' the following sentence which now appears in lines 16 to 19:

When a State Bar Association is entitled to additional delegates, the number of such additional State Bar Association delegates shall be reduced by the number of delegates elected by local bar associations within such state.

In explaining his amendment, Mr. Chamberlain said that the present language of Section 6 of the Association's Constitution provides that state bar associations in states with more than two thousand lawyers are entitled to one additional member of the House of Delegates for each additional thousand lawyers; however, it is provided that no state bar association shall have more than four delegates. Large local bar associations that meet certain requirements are also entitled to a delegate in the House, but the number of state bar association delegates is reduced by one for each such local bar association delegate. Mr. Chamberlain said that this means that the larger state bar associations —New York, Texas, California, Pennsylvania—will soon be reduced to one delegate because of the number of large local bar associations in those states. Ohio is one state where that has already happened. The purpose of the amendment, Mr. Chamberlain said, was to safeguard the number of state bar association delegates so that the state associations' representation would not be unfairly reduced. He declared that he was yielding to the wishes of the Committee on Scope and Correlation and the Committee on Rules and Calendar, which were proposing a substitute, since he was not particular about the language of the eventual amendment. He moved adoption of the amendment in order to put it before the House.

Martin J. Dinkelspiel, of San Francisco, California, Chairman of the Committee on Scope and Correlation, said that his Committee was quite sympathetic to the general idea embodied in the proposal, but believed that the matter should be studied by the two committees and another amendment prepared. He moved that the proposal be referred to the two committees.

Sylvester C. Smith, Jr., of Newark, New Jersey, recalled the work of the Committee of the old General Council of the Association which had had charge of drafting the new Constitution in 1936. The problem then had been to create a House of Delegates that would be a representative body of the lawyers of the United States and at the same time be of a workable size. Mr. Smith said that he was in favor of the purposes of Mr. Chamberlain's proposal, but he felt that the whole of Article VI should be restudied.

The House then voted to refer Mr. Chamberlain's proposal to the Committees on Scope and Correlation and Rules and Calendar.

The next proposal considered by the House was submitted by Charles W. Pettengill, of Greenwich, Connecticut. It was a proposal to amend Article VI, Section 4, of the Association's Constitution by the following sentence: "No officer or member of the Board of Governors of the Association shall be eligible to serve as a State Delegate."

Mr. Pettengill pointed out that officers and members of the Board are also members of the House of Delegates and he explained that the purpose of this amendment was to provide that they should not simultaneously serve also as state delegates. "It affords an opportunity for a state to be represented in the House of Delegates by two men instead of one and would develop new blood and additional leadership" he declared. "What State Delegate will claim that there is no other Association member in his home state ready, willing and able to represent his state for the three years during which he is serving on the Board of Governors?" he asked.

He then moved adoption of the amendment.

Allan H. W. Higgins, of Boston, Massachusetts, speaking in opposition to the proposal, argued that it might place a State Delegate who became a member of the Board in the position of urging someone else to run for State Delegate and then later running against the very man he had encouraged to succeed him. The experience of serving on the Board makes men more valuable as State Delegates, he argued.

Cuthbert S. Baldwin, of New Orleans, Louisiana, said that he agreed strongly with Mr. Pettengill. "I think this is a representative body" he said. "Nobody has an inherent right to stay in the House, and each state is entitled to be thoroughly represented in the House."

Stuart B. Campbell, of Wytheville, Virginia, said that "as a democratic body, we should permit the local lawyers in the states to select their own State Delegates without any bar from the national organization".

A former Chairman of the House, Roy E. Willy, of Sioux Falls, South Dakota, also spoke against the proposal. "The State Delegate has no prerogatives that are not common to every other member of the House" he pointed out, "except for one factor, and that is that once a year those who are State Delegates serve as a nominating body [for officers and members of the Board of Governors]. They do not elect; they merely are advisory in that capacity. Beyond that, they have no single function that is not common to every other member of the House." Mr. Willy said that he was a State Delegate, and it would be a simple matter for his state to remove him. "About all you would accomplish by adopting this amendment, if it is needed, is to increase the size of the House without in any way adding

to the proportional representation."

Mr. Dinkelspiel said that there was obviously a considerable divergence of views on the amendment and that it would be well to have it studied by the Committee on Scope and Correlation. Accordingly, he moved that it be referred to that Committee and to the Committee on Rules and Calendar.

Mr. Pettengill protested that referral would serve no useful purpose. ". . . if only we were permitted to conclude the debate before this substitute motion were considered, we would all benefit by a determination for the benefit of the members from the various states of the attitude of this House of Delegates."

The House then voted, and Mr. Dinkelspiel's substitute motion to refer was lost.

Blakey Helm, of Louisville, Kentucky, spoke in favor of the proposal. He said that when he was State Delegate in 1941 and had gone into military service, he had resigned.

Urging adoption of the proposal, Fred Roland Allaben, of Grand Rapids, Michigan, declared that no State Delegate "is so indispensable that he cannot be replaced by another competent representative".

Charles M. Lyman, of New Haven, Connecticut, urged adoption of the proposal on the ground that a member of the Board of Governors should take a national or at least a circuit-wide, view of the problems of the Association, whereas the State Delegate's loyalty should be to his own state.

Sylvester C. Smith argued that the question should be left to the judgment of the State Delegates. He said that he supposed that two thirds of them had resigned as State Delegate upon being elected to the Board, but that that was a matter for the states and circuits to decide.

Another former Chairman of the House, Thomas B. Gay, of Richmond, Virginia, was in favor of Mr. Pettengill's amendment. He pointed out that the State Delegates make the nominations for members of the Board of Governors, and often the candidate for membership on the Board was a State Delegate. It is very hard, Mr. Gay said, "for a State Delegate in a particular circuit to be unwilling to support a State Delegate from that circuit . . . if he is, as I am sure he always will be and has been, a representative member of the Bar from that state".

Albert E. Jenner, Jr., of Chicago, Illinois, also spoke in favor of the proposal. "The position of . . . a member of the Board is inconsistent with his position as a member of this legislative body, and tends to confuse the executive and the legislative". He said that there should be a "grandfather clause" however, and moved to amend the proposal by inserting the word "hereafter", so the proposal would read "No member . . . shall *hereafter* be eligible to serve as a State Delegate".

Secretary Stecher pointed out that the amendment, if adopted, would go into effect at the close of the Annual Meeting and would not therefore cover the situation of State Delegates who are presently members of the Board.

John C. Satterfield, of Jackson, Mississippi, suggested that the wording be "No officer or member of the Board of Governors of the Association hereafter elected shall be eligible to serve as a State Delegate." Mr. Jenner withdrew his substitute in favor of Mr. Satterfield's.

Gerald P. Hayes, of Milwaukee, Wisconsin, objected that that language would mean that members of the Board of Governors would forever thereafter be barred from being elected State Delegate.

Mr. Pettengill, accepting that point, said that he assumed that the four or five members of the present Board affected should be exempted from the proposal. He moved to substitute that provision for the original motion.

Secretary Stecher suggested the phrase "during the period of his tenure as an officer or member of the Board of Governors". Mr. Helm moved that that language be added to the original proposal.

James R. Morford, of Wilmington, Delaware, a former Chairman of the House, said that the debate had convinced him that the whole question should be more thoroughly studied. He said that he had voted against Mr. Dinkelspiel's motion to refer and that he now moved for reconsideration of that question.

Mr. Jenner, of Illinois, immediately moved to amend Mr. Morford's motion by providing that the reference to committee be for the purpose of redrafting and not for the purpose of report back with a negative recommendation.

Mr. Randall ruled that this amendment was not germane, and the House voted 89 to 67 for reconsideration of the motion to refer.

Mr. Pettengill moved that the motion to refer be amended so that the referral would be to the committees with instructions to report to the House at the third session with revised language.

Chairman Randall ruled that this was not in order since it was impossible for the committees to act so rapidly.

Thomas D. McBride, of Philadelphia, Pennsylvania, moved that the recommitment be only for the purpose of drafting.

Mr. Dinkelspiel asked that the sense of the House be determined as to the wisdom of the principle of the proposal.

Mr. Allaben said he was opposed to referral, since the members were nearly agreed on what was to be accomplished. If we refer, he said, it is simply a matter of delay of probably a year before the House accomplishes what was agreed upon.

Whitney North Seymour, of New York, New York, then moved to lay the question on the table until the third session of the House, and this motion was carried. (See page 1061, *infra*).

Section of Bar Activities

On motion of Harry Gershenson, of St. Louis, Missouri, the House voted to approve non-controversial amendments to the by-laws of the Section of Bar Activities.

Committee on Customs Law

The session closed with the report by Albert MacC. Barnes, of New York, New York, for the Committee on Customs Law. He said that he was retiring as Chairman of the Committee after twenty years of service. Mr. Barnes reported "mission accomplished" on H.R. 5550, which was killed before it reached the House of Representatives. At the Philadelphia meeting, the House of Delegates put the Association on record as disapproving on constitutional grounds United States membership in the proposed Organization for Trade Cooperation, which was provided for in H.R. 5550. The bill was reported to the House of Representatives by the Ways and Means Committee, but no action was taken thereon, Mr. Barnes reported.

The House then recessed.

Third Session

▪ In addition to concluding the debate on the proposed constitutional amendments, the third session of the House considered the reports of the Section of Antitrust Law, the Junior Bar Conference, the National Conference of Commissioners on Uniform State Laws, the Section of Legal Education and Admissions to the Bar, the Section of Patent, Trademark and Copyright Law, the Public Utility Law Section, the Committee on Peace and Law Through United Nations, the Section of International and Comparative Law, the Section of Real Property, Probate and Trust Law, the Committee on Legal Aid Work, the Committee on Public Relations, the Committee on Membership, the Committee on Unemployment and Social Security and the Section of Municipal Law.

▪ The House reconvened for its third session at 9:45 A.M. on Thursday, August 30, with Chairman Randall presiding.

Antitrust Law Section

Herbert A. Bergson, of Washington, D. C., the Delegate of the Section of Antitrust Law, delivered a brief oral report for that Section. Mr. Bergson said that the House had authorized the Section to support pending legislation and to oppose other legislation in the antitrust field by appearing before congressional committees considering the legislation. None of the measures had been passed by the Congress, Mr. Bergson said.

Junior Bar Conference

The report of the Junior Bar Conference was given by Stanley B. Balbach, of Urbana, Illinois. Mr. Balbach reported that the Junior Bar Conference had reached 102 per cent of its quota in the membership campaign. He also reported that the Conference was working with the American Medical Association in producing a medico-legal film, and said that the Conference was working on the establishment of a Junior Bar in Mexico.

Uniform State Laws

Reporting for the National Conference of Commissioners on Uniform State Laws, Barton H. Kuhns, of Omaha, Nebraska, President of the Conference, said that it had completed work on the Uniform Securities Act, the Uniform Gifts to Minors Act and amendments to the Uniform Arbitration Act. On his motion, the House voted to approve the two new acts, but the amendments to the Uniform Arbitration Act were debated at some length because of opposition to them by the Section of Labor Relations Law.

William B. Spann, of Atlanta, Georgia, declared that there was much disagreement in the Labor Section about the proposed amendments, since many of the members of the Section felt that the amendments weakened the power of the courts to review arbitrators' decisions. Mr. Spann moved that the amendments be deferred until the February meeting of the House of Delegates.

Martin J. Dinkelspiel, of California, urged the House to defeat the motion to defer. The Commissioners had considered the point of view of the Labor Section, he said, and the Section's proposals for amendment had boiled down to two: one amending Section 2 of the Act, the other Section 12. The Conference rejected the amendment of Section 2 and had approved the amendments of Section 12, which were now before the House. "There is nothing in the proposed amendments to Section 12 that limits the power of the court to review" Mr. Dinkelspiel declared. Postponing the amendment, he continued, will leave the Act in its present form, which the Section is dissatisfied with. ". . . in view of the fact that the majority of the state legislatures meet in 1957, before the Labor Law Section Committee can meet with us, the Act will go in its unamended form and probably will be passed in a large number of states in 1957 before further action can be taken".

Herbert S. Thatcher, of Washington, D. C., the Delegate of the Labor Law Section, explained the Section's position, saying that it felt that in order to be fair to both labor and management, both Section 2 and Section 12 should be amended, and unless both were amended, the Section could not indicate any approval of either amendment.

Ray Garrett, of Chicago, Illinois, the Delegate of the Section of Corporation, Banking and Business Law, said that his Section had unanimously endorsed the amendments to Section 12 and had disapproved the Labor Law Section's amendments to Section 2. He urged the House to vote for the Conference's amendment.

Mr. Kuhns said that the Conference was anxious to co-operate fully with the Labor Law Section, but that there was no relationship between Section 2 of the Act and the proposed amendments of Section 12. He said, "There is quite a demand, we have many requests for a Uni-

form Arbitration Act, the Conference has worked hard on it, and we would like to have the amendments approved so that the Act with the amendment to Section 12, which is in the best possible shape the Commissioners know how to make it, can go forth to the legislatures which will start meeting early in 1957."

Mr. Spann replied that this was supposed to be a Uniform Act to be submitted to the states. It was approved by the House of Delegates at the last midyear meeting, it was now being amended, and there will be a conference on further amendments. "If a Uniform Act is to be approved and sent out, we cannot continue to amend it," he declared. "The sensible thing is to defer until a full discussion has been had, a full understanding reached. . . ."

The House then voted. The motion to defer was lost and the proposed amendments were approved.

Legal Education Section

The Section of Legal Education and Admissions to the Bar, speaking through its Delegate, John M. Allison, of Tampa, Florida, moved that provisional approval be given to the Golden Gate College School of Law in San Francisco, which had met the standards prescribed by the Association. The House voted to grant this approval.

Patent Law Section

Wallace H. Martin, of New York, New York, Chairman of the Patent, Trademark and Copyright Law Section, offered the following resolution for that Section which was adopted without debate:

> RESOLVED, That the Association approves the principle of restricting future admission to practice before the Patent Office to members of the Bar, and that the Chairman of the Section of Patent, Trademark and Copyright Law be authorized to communicate to interested parties the action of the Association in adopting the resolution.

Constitutional Amendment

On motion of Charles W. Pettengill, of Connecticut, the House then removed from the table Mr. Pettengill's proposal to amend the Constitution of the Association so as to prohibit State Delegates from serving simultaneously as members of the Board of Governors. This question had been laid on the table at the second session (see page 1059).

Mr. McBride and Mr. Dinkelspiel, both of whom had made motions to dispose of the question before it was tabled during the second session now withdrew their motions, and Mr. Pettengill then proposed the following revised version of his amendment: "No officer or member of the Board of Governors of the Association shall be eligible during the period of tenure in such capacity to serve as a State Delegate. This amendment shall not apply to the officers and members of the Board of Governors of the Association as constituted by the Association year 1956-1957."

Secretary Stecher said that the second sentence of the proposal was inappropriate, since it would become a permanent part of the Association's Constitution if adopted. He suggested that the Constitution be amended as provided in the first sentence and then the second be attached as a rider, to become obsolete in two or three years.

The first sentence was then put to the House separately and a standing vote showed that 124 were in favor of the amendment. Although this was a majority of the House, the amendment was declared lost because it fell short of the two thirds of all the members (156) required for amending the Constitution. There were 234 members of the House at that time.

Mr. Pettengill immediately moved that the Committees on Scope and Correlation and Rules and Calendar be directed to draft and propose a suitable amendment to accomplish the purpose for presentation at the February meeting.

Mr. Spann objected that it was improper for the House to direct a Committee to take an affirmative action, rather than to consider and report.

The House adopted Mr. Pettengill's motion.

On Secretary Stecher's motion, the House voted to continue the Special Committee on Military Justice.

Public Utility Law Section

The report of the Section of Public Utility Law was given by Jonathan C. Gibson, of Chicago, Illinois, the Section Delegate. Mr. Gibson's report dealt with resolutions adopted by the House of Delegates at its February meeting in Chicago, which had made what Mr. Gibson said were "revolutionary changes in the federal law governing procedures before administrative agencies". Mr. Gibson declared that about 75 per cent of federal administrative practice is before public utility agencies, but that his Section had not been fully and adequately heard on the proposals. "Our views were asked for" he said, "they were given in writing. We think they were very largely disregarded." The Section had considered the matter and had adopted a resolution condemning the proposed changes in administrative procedure law and calling upon the House of Delegates to reconsider its action in adopting the February resolutions. Mr. Gibson said that he had no resolution to offer for action at this time, but that he was presenting the view of the Section to the House of Delegates and the Board of Governors, and the Committee on Legal Services and Procedure.

In answer to questions by Franklin Riter, of Salt Lake City, Utah, and James L. Shepherd, Jr., of Houston, Texas, Chairman Randall said that the Section was merely informing the House about its views and was not asking for any action at this time or for authority to appear before the Congress to present its position.

Ashley Sellers, of Washington, D. C., the Chairman of the Committee on Legal Services and Procedure, said that every effort had been made to give the Section of Public Utility Law a full and fair hearing on the question and that they would certainly have that opportunity in the future.

Peace and Law Committee

The House then considered the report of the Committee on Peace and Law Through United Nations, given by the Committee Chairman, Alfred J. Schweppe, of Seattle, Washington. Mr. Schweppe said that a treaty-control amendment had been voted favorably out of the Senate Judiciary Committee but no action was taken by the Senate on the issue. Mr. Schweppe recalled that the Association had recommended to Congress in 1953 that it give consideration to constitutional amendments relating to both treaties and executive agreements. While no specific action has been taken by Congress by way of legislation, the present Administration has publicly abandoned the promotion of certain treaties such as the Treaty on Human Rights, the Treaty on the Rights of Women, and "other treaties in the social welfare field which it was believed had an improper impact on the rights of the states".

The Committee had only one matter that required any action by the House. At the midyear meeting, the Section of International and Comparative Law had proposed that the Association appoint an accredited representative at the United Nations. The question had been referred to the Peace and Law Committee; Mr. Schweppe said that it was the Committee's recommendation that no such accredited representative be appointed.

International Law Section

Victor C. Folsom, of Washington, D. C., then reported for the Section of International and Comparative Law, of which he is the Chairman. He offered the following resolution:

WHEREAS, The United States of America is a party to the Geneva Conventions of August 12, 1949, for the Protection of War Victims, and

WHEREAS, The Geneva Conventions serve the interests of humanity by establishing legal duties with regard to the treatment of both military and civilian persons who may be counted among the victims of war, and

WHEREAS, Only through scrupulous conformity with the International Law of war by its own personnel can the United States demand like respect for the law by its enemies, if the dreaded prospect of future war should become a reality, and

WHEREAS, Knowledge of the rights conferred by the law of war would itself conduce to the safeguarding of those Americans who would come under the protection of the Geneva Conventions of 1949 in time of war, and

WHEREAS, the Geneva Conventions of 1949 require the parties thereto to include the study of the Conventions in their programs of military and, if possible, civil instruction to the end that the principles of the treaties may become known to the entire population.

THEREFORE BE IT RESOLVED: That the American Bar Association:

(1) Pursuant to the obligation undertaken by the United States upon ratifying the Geneva Conventions of 12 August 1949 for the Protection of War Victims, urges that there be included in programs of military and civilian education, to the maximum extent compatible with the peaceful purposes of the United States, instruction in these Conventions Relative to the Treatment of Prisoners of War and the protection of Civilian Persons in Time of War and for the Amelioration of the Wounded and Sick in Armed Forces in the Field and the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

(2) Recommends that state and local bar associations promote the increase of knowledge of the Geneva Conventions by conducting and giving their assistance to courses in instruction for civilian agencies and for other local organizations whose members may benefit from the Conventions or be called upon to conduct themselves in conformity therewith.

Mr. Folsom said that this was a very important subject, pointing out that many American soldiers taken prisoner by the Communists in Korea had been under a handicap when subjected to Communist indoctrination. "In many instances, the Communist interrogators were discovered to be better equipped to discuss intelligently American policies and history than was the American prisoner", Mr. Folsom said.

Mr. Riter, of Utah, urged the House to adopt the resolution. ". . . it goes deep into our very being, because the boys and girls of America today don't understand or comprehend the glorious traditions we have", he declared.

The resolution was passed unanimously.

Mr. Folsom then offered the Section's second resolution, which was this:

WHEREAS, the International Educational Exchange Program of the Department of State has had beneficial effects on our international relations, and

WHEREAS, the officers of the Department of State have requested the co-operation of the American Bar Association in carrying forward the program in respect to foreign legal specialists through the appointment of a Special Advisory Committee to assist with reference to the program for foreign lawyers;

NOW THEREFORE, be it resolved that the President of the American Bar Association be and is hereby authorized to appoint a Special Advisory Committee on Foreign Legal Specialists of five members to co-operate with the Department of State in its International Educational Exchange Program.

Mr. Folsom said that the Educational Exchange Program had been before the House of Delegates on other occasions since 1947, and that the State Department desired the co-operation of the Association in the selection of foreign legal specialists to become part of the program.

The resolution was adopted without further debate.

Mr. Folsom's next resolution was as follows:

RESOLVED, That the American Bar Association urges that Section 33 of the Trading with the Enemy Act with respect to the bar date of February 9, 1955, be amended by adding thereto at its end a new paragraph as follows: "If the notice of the claim has been mailed, the notice shall be considered as having been filed at the date on which it is postmarked."

Mr. Folsom explained that administrative agencies in Washington do not follow a uniform policy respecting the date-of-mailing theory. While it was a small matter, he said, it was felt that there should be a uniform practice.

The resolution was adopted without debate.

Mr. Folsom said that the Section's next resolution, originally numbered as one on the calendar, had been withdrawn because it had become moot. The resolution had favored S. 1124, an amendment to the Trading With the Enemy Act. The bill had been passed and signed into law, Mr. Folsom said.

The next resolution offered by Mr. Folsom dealt with the Organization for Trade Co-operation. Mr. Folsom said that his Section and the Committee on Customs Law had differed on this matter. The Association had authorized the Customs Law Committee in Philadelphia to oppose adherence to the Organization for Trade Co-operation before the Congress. "Frankly, the Congressmen could not understand what the American Bar Association was trying to say in the resolution."

The question is now moot, since H.R. 5550, the bill in question, died in the last session of the 84th Congress, Mr. Folsom said, and what the Section wanted was assurance that if a new bill is introduced in Congress both the Section and the Committee will have a chance to study and report back to the House of Delegates.

Mr. Seymour, of New York, moved the following:

> RESOLVED, That any future proposed legislation with respect to membership in the Organization for Trade Co-operation be referred for consideration and report to the Section of International and Comparative Law and the Committee on Customs Law jointly.

The resolution was adopted without further debate.

Mr. Folsom then presented his last resolution, which was a recommendation favoring appointment of an accredited American Bar Association representative at the U.N., the proposal disapproved by the Committee on Peace and Law Through United Nations, as previously reported by Mr. Schweppe.

Mr. Folsom moved that the Section's resolution authorizing such a representative be adopted. He said that the Section and the Peace and Law Committee had conferred on the matter and could not agree. The representative would have no power to bind the Association in any way, he stressed, and the Section believed that such a representative was needed to keep the Association abreast of developments at the United Nations. He cited two recent instances where unknown to the Association the United Nations had considered policies that might become international law and that would certainly not meet the approval of American lawyers.

Mr. Schweppe, for the Peace and Law Committee, disagreed with Mr. Folsom that any representative was needed. Mr. Schweppe said that the two groups of organizations mentioned in the resolution were loosely knit organizations "which meet either with the State Department to be briefed on what the State Department has in mind or which meet on call of the United States Mission to the United Nations in New York City to be similarly briefed". It was the Committee's view, said Mr. Schweppe, that the Association need not join to be fully advised. He pointed out that the Committee members subscribed to the *United Nations Review* and the *State Department Bulletin* and had no difficulty in keeping informed about United Nations activities.

Frank E. Holman, of Seattle, Washington, a former President of the Association, argued that the Association should not tie itself in any way to the United Nations. "Unless you want to be caught up in all this labyrinth of economic, social, religious and other proposals that are offered to these groups, unless you want to be characterized as being a member and going along with it, you should defeat this proposal", he declared.

Mr. Folsom said that it was his understanding that the chief objection of the Peace and Law Committee was financial, and he said that he had found a member of the Association, who was now acting as an observer for another organization at the United Nations who had agreed to serve the Association in a similar capacity for no charge. "I don't think there is any crime connected with having an accredited observer to the United Nations" Mr. Folsom said. "That doesn't mean that you agree with what they do. It doesn't mean at all that you agree with what they do. You may disagree one hundred per cent, but you would like to know what they are doing."

Mr. Schweppe said that the financial aspect was not the Peace and Law Committee's only objection. The Committee felt, he said, that the professional interest of the Association was not great enough to justify joining the organizations or having a paid or unpaid observer.

Jacob M. Lashly, of St. Louis, Missouri, urged the House not to make it appear that the Association was prejudiced against the United Nations. "Nearly all the other national organizations have special observers to gather the information they need for their particular interest in the activities of the United Nations. There appears to be no reason on earth, so far as I can see, why the American Bar Association should not also have an authorized observer to find out the particular interests of the Association and report them back to the accredited leadership of the Association."

The House then voted, and the Section's proposal was lost by a vote of 71 for to 78 against.

Section of Taxation

The report of the Section of Taxation was given by David W. Richmond, of Washington, D. C., the Section Chairman. Mr. Richmond's Section had thirty-two proposals for action by the House of Delegates, the first two of which dealt with changes in the Section's by-laws. Since these changes had not been presented to the Board of Governors, Mr. Richmond withdrew them. The remaining thirty proposals dealt with highly technical changes in the 1954 Internal Revenue Code and are too long to be printed here. They were adopted as a group by the House without de-

bate, on motion of Tracy E. Griffin, of Seattle, Washington. The text of these resolutions will appear in the *Annual Report* of the Association.

Real Property Law Section

The Section of Real Property, Probate and Trust Law, reporting through its Section Delegate, Rush H. Limbaugh, of Cape Girardeau, Missouri, had two recommendations. The first, providing for changes in the Section's by-laws, was approved without debate.

Mr. Limbaugh then offered the following:

RESOLVED, That the American Bar Association request the Congress of the United States to enact and the President of the United States to approve the following amendments to Section 2410 of the Judicial Code and Judiciary which is title 28 of the United States Code:

(a) Subsection (c) of Section 2410 of title 28 of United States Code amended by striking out the third sentence thereof which now reads as follows:

Where a sale of real estate is made to satisfy a lien prior to that of the United States shall have one year from the date of sale within which to redeem.

(b) Section 2410 of title 28 of the United States Code further amended by adding a new subsection (e) reading as follows:

A non-judicial sale shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated provided the person conducting such sale or the person for whose benefit it is conducted shall, 60 days before such sale, give notice in writing by registered mail to the United States Attorney for the district in which such sale is to take place or an Assistant United States Attorney or clerical employee designated by the United States Attorney in writing, filed with the Clerk of the Court having jurisdiction where such sale is conducted and to the Attorney General of the United States at Washington, District of Columbia, and setting forth in such writing the fact of such proposed sale and with particularity the nature of the interest or lien of the United States. Within such 60 days after such notice and before said sale, the United States may take such action as may appear to be appropriate.

Mr. Limbaugh explained that the purpose of the proposed subsection (e) of Section 2410, Title 28, U.S.C., was to provide that in all sales of property under a power of sale contained in the instrument creating the lien, the Government be given sixty days' notice in advance of the proposed sale. He said that the two amendments were badly needed in order to promote the merchantability of title after either a judicial sale or a sale under a power of sale is made.

In reply to a question by Mr. Ritter, of Utah, Mr. Limbaugh said that the proposal would not affect present pending litigation.

Mr. Shepherd, of Texas, asked if the Section had considered how the sixty days' notice might be reflected in the record.

Mr. Limbaugh said that that could be done only by recording copies of the notice or "evidence in some manner that the notice was given". He added that this was a detail that would have to be worked out when the legislation was drafted in final form.

Answering Mr. Fitts, of Vermont, Mr. Limbaugh said that the proposal would not affect sales in states that have strict foreclosure and do not provide for non-judicial sale. "This would only relate to those states where powers of sale are authorized in the instrument creating the lien."

The House then adopted the second proposal of the Real Property Section.

Legal Aid Work Committee

William T. Gossett, of Dearborn, Michigan, Chairman of the Legal Aid Work Committee, gave a brief oral report for that Committee. He offered the following resolutions which were adopted without debate:

WHEREAS, The American Bar Association has repeatedly affirmed its responsibility to study and improve the administration of justice in the interests of the poor and has charged the Standing Committee on Legal Aid Work, directly and in co-operation with other agencies, to encourage the establishment of legal aid organizations; and

WHEREAS, It is well established that legal aid service on an organized basis is needed in the larger communities for both civil and criminal cases in order to make the administration of justice more effective under present-day urban and industrial conditions of living; and

WHEREAS, The Association has adopted the policy that the instrumentality, whether public or private, to be adopted in rendering legal aid should be determined by local conditions, needs and wishes.

NOW THEREFORE BE IT

I

RESOLVED, That the Committee, in co-operation with the National Legal Aid Association and state and local bar associations, continue its work of encouraging the establishment, improvement and expansion of organized legal aid services for civil matters in the large cities and the establishment of such services in the smaller cities where such services appear to be needed; and

II

FURTHER RESOLVED, That the Committee, in co-operation with the National Legal Aid Association and state and local bar associations, actively undertake to encourage the establishment of organized legal aid services for the defense of indigent persons accused of crime in the state or federal courts wherever such services appear to be needed; and that the Committee call upon each state bar association to appoint a special committee or to charge its legal aid committee, if one shall have been appointed, to study the effectiveness of any existing system of providing representation in criminal cases for persons unable to employ lawyers, and to take steps looking toward the improvement of each such system and the establishment of an adequate system where none now exists; and

III

FURTHER RESOLVED, That the Committee request the legal aid committees of the state bar associations or the special committees appointed as above, either directly or through local bar associations, to assist the federal and state appellate courts, at the request of the Conference of Chief Justices and on reference of such courts, in providing volunteer legal service to indigent persons convicted of crime where there is reason to believe that the ends of justice have not been met; and that the National Legal Aid Association be requested to

assist in developing necessary liaison and procedures for the referral of such cases to the state committees.

On motion of Secretary Stecher, the House then voted to continue the Special Committee on Impact of Atomic Attack on Legal and Administrative Processes.

Public Relations Committee

The report of the Committee on Public Relations, given by Chairman Richard P. Tinkham, of Hammond, Indiana, mentioned a prospective national television show on the legal profession, if a dignified commercial sponsor can be found, a series of films on medico-legal subjects, to be sponsored jointly by the American Bar Association's Junior Bar Conference and the American Medical Association, and the national speakers bureau due to begin to function this fall. Mr. Tinkham said that the public relations program of the Association was being stepped up. He also reported on Canon 35, relating to photographers and television and radio broadcasters in court, saying that the media are impatient for a change in the Canon. The American Bar Foundation is considering the whole situation of amending the Canons, Mr. Tinkham said.

Secretary Stecher announced that the following had been elected Assembly Delegates for three-year terms beginning at the adjournment of the Annual Meeting: Cecil E. Burney, of Corpus Christi, Texas; Ashley Sellers, of Washington, D. C.; William A. Sutherland, of Atlanta, Georgia; Paul W. Lashly, of St. Louis, Missouri; and James D. Fellers, of Oklahoma City, Oklahoma.

The only recommendation of the Committee on Judicial Selection, Tenure and Compensation was this:

> That action on S. 2359, providing for the designation by the President of Chief Judges of the Judicial Circuits of the United States, be deferred pending the study by the Judicial Conference of the United States.

The recommendation was adopted on Secretary Stecher's motion, in the absence of any members of the Committee.

Membership Committee

Cecil E. Burney, of Corpus Christi, Texas, Chairman of the Membership Committee, reported on the Association's successful membership campaign. In showing what strides had been made in the past year, Mr. Burney declared: "In 1955, twenty of our states had less than 25 per cent of their lawyer population as members of the American Bar Association. In 1956, only four of the states fall into that category, and Nevada, with a total of 350 possibilities including the 'wetbacks', now has 317 members of the American Bar Association. . . . In 1955, some 6000 applications were received at Headquarters. In 1956, 33,290 applications were received there. In 1955, 5,657 lawyers were elected to membership in the American Bar Association. In 1956, 28,357 lawyers have already been elected to membership, with over 5,000 applications still pending. In 1955, our membership was 55,101. Today, in 1956, our membership exceeds 82,000 members with an additional 5,000 applications pending."

Unemployment and Social Security

Allen L. Oliver, of Cape Girardeau, Missouri, Chairman of the Committee on Unemployment and Social Security, said that since lawyers are now covered by social security, the Government was preparing a pamphlet for the benefit of the self-employed now newly brought under the terms of the statute.

On Mr. Stecher's motion, the House voted to continue the Committee on Continuing Legal Education of the American Law Institute and the American Bar Association.

Municipal Law Section

The report of the Section of Municipal Law was given by the Section Delegate, Harold S. Shefelman, of Seattle, Washington. He offered the following resolution:

> RESOLVED, That the American Bar Association recommends to state legislatures the enactment of legislation which will provide in a judicial proceeding for the expedition and final adjudication of all questions which may arise in connection with the validity of proposed state and municipal bond issues and which will permit the consolidation of all suits affecting the validity of such securities.

Mr. Shefelman said that the purpose of the resolution is to expedite the determination of suits brought before bonds are issued and to authorize the courts to consolidate such suits.

The recommendation was adopted without debate.

Mr. Shefelman then offered a second resolution, which was as follows:

> RESOLVED, The legislatures of the respective states be urged to adopt statutes which will authorize the execution of large public bond issues with facsimile signatures and at least one manual signature.

Mr. Shefelman explained that many states have statutes that require that all signatures to bond issues be manually affixed, and some of these issues are so large that it requires two or three corporation officers to spend a week or more signing the bonds. The purpose of the resolution was to require only one manual signature and permit the others to be affixed by facsimile.

The resolution was adopted without debate.

The House then recessed at 12:30 P.M.

Fourth Session

■ **The fourth and final session of the House was very short. The reports of the Committee on Income Tax—Submission of Amendment and of the Committee on Regional Meetings were given, and the House considered the two resolutions passed by the Assembly on the day before.**

■ The House of Delegates reconvened for its fourth and last session during the 1956 Annual Meeting at 9:30 A.M. Friday, August 31. Chair-

man Randall presided.

Income Tax Committee

William Logan Martin, of Birmingham, Alabama, Chairman of the Committee on Income Tax—Submission of Amendment, reported on progress on the Reed-Dirksen Amendment, which would limit the power of Congress to levy income taxes. Mr. Martin said that he and Robert B. Dresser, of Providence, Rhode Island, a member of the Committee, had appeared before a Senate subcommittee to testify in favor of the Amendment, and, while the subcommittee members seemed to be favorably impressed, no recommendation had been made to the full committee. He said that he had scant hope that the Association could secure adoption of the amendment by itself, but that there were encouraging signs that more and more citizens were becoming interested in the tax problem. Mr. Martin outlined the provisions of the proposed constitutional amendment and declared that its adoption was essential to "bring our country back to its former state as a government of states and a national government, and not a supreme national government with constant usurpation of constitutional powers".

The Committee's only recommendation was that it be continued, and this was passed without debate.

The House then voted to rescind its action continuing the Committee To Study Implementing Report of Survey of Bar Examiners and Related Subjects. Secretary Stecher explained that the Section of Legal Education and Admissions to the Bar was carrying forward that project and the special committee was no longer needed.

Regional Meetings Committee

Charles S. Rhyne, of Washington, D. C., Chairman of the Committee on Regional Meetings, said that there had been four extremely successful Regional Meetings during the year—the largest number in history. The meetings were at St. Paul, New Orleans, Hartford and Spokane, and Mr. Rhyne praised the local chairmen who had headed them. Two more meetings—one in Baltimore in October and another in Denver next May—had been scheduled, Mr. Rhyne said.

R. Carleton Sharretts, of Baltimore, Chairman of the Baltimore Regional Meeting Committee, spoke briefly, inviting members of the House to attend that meeting.

Assembly Resolutions Considered

The House then considered the two resolutions passed by the Assembly Thursday (see page 1043). The first of these, introduced by Ben R. Miller, of Baton Rouge, Louisiana, was approved with a slight modification urged by Mr. Miller. The second, proposed in the Assembly by Palmer Hutcheson, of Houston, Texas, was disapproved. In brief debate on this second Assembly resolution, Cuthbert S. Baldwin, of New Orleans, called the resolution "an innocuous resolution with a sting, a hidden sting, in it". Mr. Baldwin declared that the language of the resolution could be construed in many ways and was so worded as to be almost meaningless.

Mr. Hutcheson was present and requested unanimous permission to speak on the resolution, but was denied that permission.

Committee on Draft

Mr. Baldwin, as Chairman of the Committee on Draft, then offered the following resolutions which were adopted without debate:

WHEREAS, John J. Mahon, of Maine, Floyd W. Beutler, of New Mexico, and H. Glenn Kinsley, of Wyoming, have served in the House of Delegates of the American Bar Association with honor and distinction, have unselfishly devoted their counsel and talents to its deliberations and have made invaluable contributions to its proceedings, all in the accomplishment of the objectives of the profession to which they dedicated their lives; and

WHEREAS, God, in His infinite wisdom, having seen fit to call them from our midst, this House notes with profound sadness their absence from its proceedings; now, therefore, be it

RESOLVED, by the House of Delegates, in meeting assembled at the 79th Annual Meeting of the American Bar Association in the City of Dallas, Texas, that it does now pay its tribute and respect to our beloved departed friends, and expresses its very deep sorrow at their passing; be it further

RESOLVED, That this resolution be spread upon the minutes of the proceedings of the House, and that copies thereof be sent to the bereaved families of our departed friends.

Mr. Baldwin's second resolution was as follows:

RESOLVED, That the House of Delegates of the American Bar Association, both on its own behalf and on that of the Association, expresses its deep appreciation of the warm and hearty welcome and the generous hospitality extended to the members of the Association and to their ladies by the gracious people of The Lone Star State, on this, the occasion of the Seventy-Ninth Annual Meeting of the Association; and further

RESOLVED, That the House extends its particular thanks to the State of Texas, to the host City of Dallas, to the State Bar of Texas, to the Dallas Bar Association, to the Houston Bar Association, and especially to the many lawyers and groups of lawyers who, with their ladies, have served on the various Committees and have otherwise contributed to that friendly and whole-hearted reception which has made this Annual Meeting a truly memorable occasion; and further

RESOLVED, That the Secretary of the Association send copies of these resolutions to the Governor of the State of Texas, to the Mayor of the City of Dallas and to the Presidents of the State Bar of Texas, the Houston Bar Association and the Dallas Bar Association.

On motion of David F. Maxwell, of Philadelphia, Pennsylvania, the House voted to authorize the Incoming President in his discretion to appoint a Special Committee to co-operate with the English Societies in arrangements for the London Meeting.

The House adjourned *sine die* at 10:25 A.M.

Sections and Committees

Harold L. RUSSELL

SECTION OF ADMINISTRATIVE LAW

■ During the Annual Meeting in Dallas, the Section of Administrative Law held a series of three well-attended sessions.

The first session, held on Monday afternoon August 27, was devoted to a discussion by a panel of experts on the subject of legislative oversight of administrative procedures. The announced topic, titled "Does Congress Know What Goes on in the Administrative Process?", attracted an interested audience to the session, which was presided over by the Section Chairman Rufus G. Poole, of Washington, D. C.

Bernard Schwartz, Director of the Institute of Comparative Law, New York University School of Law, led off with a discussion of his view that Congress is under a duty to supervise administrative procedure and practice. Under its responsibility to legislate and its duty to account to the people, he contended that the Congress has power not only to obtain information but to oversee the exercise of the authorities which it grants to the Executive branch.

Dr. Schwartz was followed by Hans Klagsbrunn, of Washington, D. C., who reported to the Section on H. Res. 462, a proposal in the 84th Congress, to establish a Committee on Administrative Procedure and Practice. He stated that negotiations at the close of the congressional session indicated a favorable outcome in the effort initiated by the Section to bring about the establishment of a permanently staffed committee which would work with the agencies and with other committees of the Congress in the field of administrative procedure. As contemplated, such a committee would co-ordinate its activities in a complementary fashion with similar activities in the proposed Office of Administrative Procedure in the Executive branch.

Samuel Estep, Director of Legislative Research at the University of Michigan, followed the first two speakers. He discussed "State Experiments in Overseeing Administrative Procedure", and pointed to some of the pitfalls which have been encountered by the states in approaching legislative oversight in terms of direct legislative review. This approach he did not advocate.

The second session was held on Tuesday. The morning portion was devoted to a discussion of the topic "What Is Currently Wrong with State Administrative Procedures?" Section Vice Chairman E. Blythe Stason, Dean of the Law School of the University of Michigan, presided jointly with Chairman Poole. The session was addressed by Frank E. Cooper, of Detroit, Michigan, and Frank C. Newman, of the University of California, Berkeley, California, each of whom spoke of state experience under administrative procedure enactments. Their talks were followed by supplementary related remarks from John W. Cragun, of Washington, D. C., Whitney R. Harris, of Dallas, Texas, Maurice Merrill, of Norman, Oklahoma, and Horace Russell, of Chicago, Illinois. The afternoon portion of the program was devoted to status reports of action by the Special Committee on Legal Services and Procedure. Dean Stason reported on a revised Code of Federal Administrative Procedure. F. Trowbridge vom Baur, General Counsel of the Navy Department, Washington, D. C., and John W. Cragun reported, respectively, on the proposed Office of Administrative Procedure and the proposed specialized courts.

At the conclusion of the Tuesday meeting, officers and Council members were elected for the coming year. The proceedings closed with a short session on Wednesday, consisting of an "open house" at which members of the Section had an opportunity to make suggestions to the Drafting Committee in charge of drafting the Code of Federal Administrative Procedure.

A number of matters were acted upon by the Council of the Section in a two-day session preceding the Section meetings. These were submitted for Section action during a brief business session following the program.

Among the items approved by the membership was a resolution, to be submitted to the House of Delegates at a later date, calling for support of an Administrative Procedure Act for the government of the District of Columbia. The Section also approved a recommendation that the Association support agency recognition of attorney representation. That resolution urges that the practice be corrected whereby some agencies fail to notice or serve attorneys of record, thus depriving persons of the right to be effectively represented by counsel. A Council recommendation was also approved for legislation to specify a rate of compensation for the judicial officer of the Department of Agriculture equivalent to that of an Assistant Secretary of the Department.

Officers elected for this year are: Chairman, Harold L. Russell, of Atlanta, Georgia; Vice Chairman, Donald C. Beelar, of Washington, D. C.,

and Secretary, Elizabeth C. Smith, of Washington, D. C.

The Section Delegate to the House of Delegates is John W. Cragun, of Washington, D. C.

The new members of the Council are: Robert M. Benjamin, of New York, New York; Whitney R. Harris, of Dallas, Texas; Earl Kintner, of Washington, D. C.; Hans A. Klagsbrunn, of Washington, D. C., Charles E. Long, Jr., of Dallas, Texas; L. Clair Nelson, of Hamilton, Ohio; Rufus G. Poole, (Last retiring Chairman) of Washington, D. C., and Kenneth Teasdale, of St. Louis, Missouri.

Churchill RODGERS

SECTION OF CORPORATION, BANKING AND BUSINESS LAW

■ Three half-day sessions of this Section were conducted during the Annual Meeting in Dallas on August 27 and 28.

Reports of the Committees of the Section were published in the July issue of *The Business Lawyer*, a quarterly magazine published by the Section and sent to all its members. A full report of all of the proceedings at Dallas will be published in the November issue of *The Business Lawyer*.

There are a large number of new members of the Association, and many of them accepted an invitation of this Section to join in its activities. At the time of the meeting in Dallas, the membership of this Section, which is the largest of all Sections of the Association, was the greatest in history. At Dallas, the Section set as its goal an increase in membership to 10,000 during the coming year. Any member of the Association who desires to join the Section need merely write a letter of application to the Sections Department, American Bar Center, 1155 East 60th Street, Chicago 37, Illinois, and enclose a check for the $5.00 annual dues of the Section.

New officers of the Section were elected as follows: Chairman, Churchill Rodgers, of New York City; Vice Chairman, Herbert F. Sturdy, of Los Angeles, and Secretary, George C. Seward of New York City. Elected to the Council of the Section were Carl W. Funk, of Philadelphia, Charles W. Steadman, of Cleveland, Ohio, and William H. Nieman, of Cincinnati, Ohio. Elected as Delegate of the Section in the House of Delegates was the retiring Chairman, Paul Carrington, of Dallas, Texas. Committees for the new year have been appointed and are already at work in the many fields of activities to which this Section is devoted.

SECTION OF CRIMINAL LAW

■ Everyone who participated in the meeting of the Criminal Law Section at Dallas will remember the Public Library as one of the most impressive features of that agreeable city. The meeting room provided by the Library was a model of comfort and efficiency and it was gratifying that all the sessions held there were well attended.

On Monday afternoon, the federal loyalty-security program was discussed by a panel consisting of Scott McLeod, Administrator of Security and Consular Affairs of the Department of State, Dudley Bonsal, of New York, Chairman of the Special Committee of The Association of the Bar of the City of New York, which has just completed a study of this subject, and Charles P. Curtis, of Boston, Massachusetts, a distinguished critic of some features of the program. The meeting was also addressed by Assistant Attorney General George Cochran Doub, who described current proposals and developments now pending in the

Walter P. ARMSTRONG, Jr.

Department of Justice. While there was enough variation among the viewpoints represented by the panelists to make for a lively discussion, the net effect of the session was to give a well-rounded picture of federal loyalty-security procedures and the chief problems which have arisen in connection with the loyalty-security program.

On Tuesday morning a surprisingly large number of Association members and their families availed themselves of the Section's invitation to visit the Federal Correctional Institution at Seagoville, Texas, by special bus transportation furnished through the courtesy of the Dallas Bar Association. The visitors were conducted around the institution by James V. Bennett, Director of the Federal Bureau of Prisons, and Acting Warden William J. Bean. Seagoville is the only penal institution of its kind in the United States; it is entirely without walls and is run by a relatively small custodial staff. Following a program which included a review of case histories and a statistical analysis of the inmate population, those attending were invited to lunch in the regular prison "chow line", where they were regaled with elk steak.

Tuesday afternoon, carrying on the same theme, of postconviction problems and treatment, the program featured a discussion of sentencing practices in connection with misdemeanor offenses, by Chief Judge Thomas Herlihy, Jr., of the Municipal Court, Wilmington, Delaware, followed by Professor Herbert Wechsler, of the Columbia University Law School (and reporter for the A. L. I. Model Penal Code project), who spoke on treating persons guilty of offenses in the major-

crime categories. Bolitha J. Laws, Chief Judge of the District Court for the District of Columbia, presided and described the current activities of the National Probation and Parole Association, which had joined with the Section as co-sponsor to make this part of the program possible.

On Wednesday morning, the Section concluded with a lively discussion of the subject, "Are the Courts Handcuffing the Police?" Panel participants were Chief Carl Hansson, of the Dallas Police Department, District Attorney J. Francis Coakley, of Alameda County, California, Professor Fred E. Inbau, of Northwestern University School of Law, and Judge Dwight L. McCormack, of the Texas District Criminal Court. The speakers were in surprising agreement that present trends in judicial interpretation, relating to the law of arrest, search and seizure, incriminatory statements and confessions, and law-enforcement activity in general, appear to be imposing undue restrictions on police activities.

A number of current projects under way within the Section were described in committee reports made to its membership including: a study of the extent to which lawyers are ethically free to counsel persons engaged in so-called organized crime activities; an analysis of the rights of defense counsel in criminal cases in compelling discovery and disclosure of the prosecutor's case; a continuing study of the *Durham* case test for mental competency and insanity in criminal cases; research on possible improvements in the federal tax laws to penalize the operation of illegal enterprises and absorb the fruits of crime; review and reappraisal of narcotic drug laws; a study of the effects of crime portrayal in public media; and an appraisal of possible methods to tighten existing laws against kidnaping.

Officers elected to serve the Section in 1956-57 are: Walter P. Armstrong, Jr., of Memphis, Tennessee, Chairman; James V. Bennett, of Washington, D. C., Vice Chairman; Rufus King, of Washington, D. C., Secretary; Louis B. Nichols, of Washington, D. C., Assistant Secretary; and Arthur J. Freund, of St. Louis, Missouri, Section Delegate to the House of Delegates. John R. Snively, of Rockford, Illinois, was re-elected to the Council, and one additional Council post was filled by the election of Judge Evelle J. Younger, of Los Angeles.

At this year's meetings, copies of a new Section publication, a small volume containing its reports for 1954 and 1955, were distributed to the membership. This innovation was favorably received and plans are now being made to publish the current reports in similar form next year. The Section also devoted considerable time to planning its participation in the 1957 program in London, where it hopes to sponsor programs of unusual interest to demonstrate the workings of British criminal law and law enforcement for visiting Association members.

Victor C. FOLSOM

SECTION OF INTERNATIONAL AND COMPARATIVE LAW

■ The Section of International and Comparative Law held a series of stimulating and informative sessions at the Annual Meeting of the Association in Dallas. The broad scope of the work being done by the Section is indicated by the fact that some twenty-five committee reports were received. While these reports deal with important matters of international and comparative law and are useful studies to those who work in the field of private international law and to others who mold the foreign policy of the United States, few of them are of the type that require action by the Association. The Council met twice on Sunday and considered recommendations to be submitted to the Section. Some of these received approval while others were rejected.

At the breakfast meeting of the Section, held jointly with the American Foreign Law Association, on Tuesday morning, Miss Marjorie M. Whiteman, Assistant Legal Adviser for Inter-American Affairs of the Department of State, spoke on "Territorial Waters and Related Subjects". Her informative talk on a subject of current interest was followed by a lively discussion in which prominent foreign jurists participated.

The business meetings of the Section were held on Tuesday and were well attended. In his report of activities during the past year, Chairman Victor C. Folsom, of New York, called attention to the membership drive which seeks to double the Section's present membership. While returns are just beginning to come in, Mr. Folsom indicated that the campaign appeared to be making good progress.

It was decided that the Section will distribute a bulletin for the purpose of keeping its members informed of the activities of the Section. It is contemplated that during the first year there will be only two or three issues published, but that it will be made a quarterly as soon as possible. The bulletin will contain news of the Section and articles and committee reports of current value to those interested in private and public international law.

The Section re-elected the following officers for the current year: Victor C. Folsom, of New York, Chairman; Homer G. Angelo, of San Francisco, California, First Vice Chairman; John N. Hazard, of New York, Second Vice Chairman, and Helen L. Clagett, of Washington, D. C., Secretary.

Herman Phleger, Legal Adviser, the Department of State, was elected to the Council and Sam G. Baggett, of Boston, Massachusetts, and Jacob M. Lashly, of St. Louis, Missouri, were re-elected to terms expiring in 1960.

The Section, jointly with the Junior Bar Conference, held a luncheon meeting on August 28, at which the guest speaker was Francis O. Wilcox, Assistant Secretary of State for International Organization Affairs, who spoke on the subject of "The United Nations and American Foreign Policy". The meeting was presided over jointly by Mr. Folsom and Robert G. Storey, Jr., National Chairman of the Junior Bar Conference. In his address, Mr. Wilcox discussed the United Nations charter revision, and provided the members present with a well informed analysis of this complicated matter. In attendance at the meeting were outstanding members of the Bar of several countries, including: Sir Reginald Manningham-Buller, Attorney General, Royal Courts of Justice, London; Sir Edwin Savory Herbert, Law Society of London; Paul P. Hutchison, President, Canadian Bar Association; James J. Robinson, Associate Justice of the Supreme Court of the Kingdom of Libya; Choudrie Nazir Ahmad Khan, President, Pakistan Bar Association; S. A. Rahman, Justice of the West Pakistan High Court; Awni Dajani, Associate Justice of the Supreme Court of Libya, and Lic. Virgilio Dominguez of the Barra Mexicana. Many of these foreign visitors also attended the breakfast and regular Section meetings.

This Section concluded a full day's activities with a reception in honor of the distinguished foreign guests, held jointly with the Inter-American Bar Association, in the Embassy Room of the Statler Hilton Hotel.

The Section has planned a full program for the London meeting commensurate with its international status in the Association and hopes that its members will attend in force.

SECTION OF LABOR RELATIONS LAW

■ The highpoint of the annual meeting of the Labor Relations Law Section was an address by Oscar S. Smith, Director of the Organization and Personnel Division of the Atomic Energy Commission, delivered at the annual luncheon on Tuesday, August 28. In a major portion of his address, Mr. Smith discussed the procedures for handling labor disputes in government-owned atomic energy plants. The Atomic Energy Labor-Management Relations Panel was created in 1949 to consult with contractors and labor organizations on the settlement of disputes provided that the labor organizations observed their undertaking to place the right to strike "in escrow" with the panel. In 1953, the original panel resigned and its functions were transferred to a new panel within the Federal Mediation and Conciliation Service. The labor organizations interpreted this as releasing them from their pledges not to engage in strikes or lockouts. Under the new procedure there were three prerequisites to panel intervention: (1) a finding by the AEC as to the impact of the dispute; (2) a finding by the FMCS that its facilities had been exhausted; and (3) referral of the dispute by the FMCS to the panel. The panel has now been transferred back to the AEC and these procedures have been discarded. In tracing past experience and analyzing the problems facing those seeking to develop new procedures, Mr. Smith noted the basic dilemma which requires finding some form of special procedure in atomic energy industries, yet forbids all set procedures because they tend to tie the hands of mediators.

Robert M. SEGAL

> In practice, the pre-intervention findings by AEC as to impact, and by the Service as to exhaustion of mediation, seem to leave little choice of action for the Panel but to hold hearings and issue recommendations.

Accordingly, Mr. Smith questioned the wisdom of making provision for any formal finding that mediation had been exhausted or for requiring the AEC to make a finding on impact. The Commission, he thought, might limit itself to "(1) making the most correct and complete factual appraisal it can of the impact of a stoppage, and (2) supplying these facts to the highest mediation authority—in our case the Panel—well before an impact is reached" leaving it to the Panel to decide "when and whether to intervene". The AEC experience with too rigid procedures is of considerable interest for those concerned with other major industrial disputes.

During the two-day session, the Section received a number of significant committee reports reviewing legislation and judicial developments during the previous year. Professor Archibald Cox, of the Law School of Harvard University, presented a paper reviewing recent decisions of the Supreme Court affecting labor management relations. The Texas Bar presented an illuminating and practical discussion of current problems facing labor unions and employers under statutes and court decisions concerning racial discrimination. The reports and papers will be distributed to members in the Section handbook.

Three committee reports were debated on the floor.

(1) On the recommendation of the Committee on National Labor Relations Board Practice and Procedure, the Section voted to establish a standing committee to meet and informally discuss with the National Labor Relations Board questions relating to NLRB practice and procedure and also to request the House of Delegates to authorize the Council to appoint a committee to confer with appropriate authorities with a view to securing adoption of changes in NLRB practice and procedure previously recommended by the House of Delegates. The proposed standing committee would furnish a point of contact between practicing lawyers and government officials in discussing their mutual problems relating to NLRB practice and procedure whereby each may

gain familiarity with the other's point of view.

(2) The Section approved a report of a special committee recommending amendments to the proposed Uniform Arbitration Act which would restate the grounds on which an order for arbitration might be refused and an award might be vacated.

(3) The Committee on the National Labor Relations Act brought in a significant report proposing two substantive amendments on which there was a substantial consensus within the committee. One would extend the present prohibition on minority strikes against a union certified as bargaining representative to cover strikes against an individual certified as bargaining representative. The other would authorize employers and unions in the construction, amusement and maritime industries to enter into pre-hire contracts and union-shop contracts requiring all employees to become members after seven days. After a lively debate the Section expressed approval of the former proposal but voted to withhold any expression of opinion upon the latter.

Robert M. Segal, of Boston, Massachusetts, was elected Chairman and Gerard D. Reilly was elected Vice Chairman for the ensuing year. The Secretary and Council members continue unchanged.

The members attending the annual meeting gained pleasure and benefit from the attendance of Chairman Leedom and member Bean of the National Labor Relations Board and from a visit by Theophil Kammholz, General Counsel.

SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

■ The Section held a joint session in Dallas on Tuesday morning, August 28, with the National Conference of Bar Examiners at which Olin E. Watts, of Jacksonville, Chairman of the Florida State Board of Bar Examiners, spoke on "The Bar's Responsibilities to Law Students". He pointed out that traditionally in the United States the Bench and Bar have controlled the training for admission to practice; that this is true even though the conventional method is law school instruction rather than law office study, and that lawyers and judges should take a more active interest in the law schools—screening of applicants, adequacy of budgets, competency of teachers, breadth of curriculum, standards of scholarship and content of libraries.

Herbert W. CLARK

Also, at the joint session, Dean Erwin N. Griswold, of the Harvard Law School, and James P. Hart, former Justice of the Supreme Court of Texas, staged a panel discussion on Pre-Legal Education" at which Dean Joseph A. McClain, Jr., of Duke University, presided. The speakers pointed out that law school administrators and teachers have complained for years of the inadequacy of the undergraduate training of law students; that the primary need is for education; that some effective tests are being devised by which to evaluate the adequacy of pre-law training; and that the law schools can resolve the problem in part by requiring such tests and by the flat refusal to admit applicants who have not demonstrated that they have the aptitude or requisite training for law study.

The session on Tuesday afternoon was given over to a panel discussion on "Continuing Professional Education" with Dean Robert G. Storey, of Southern Methodist University, presiding. The panel speakers were Dean W. R. Woolrich, of the College of Engineering of the University of Texas, Dean Richard L. Kozelka, of the School of Business Administration of the University of Minnesota, and Dean Stanley W. Olson, of the School of Medicine of Baylor University. Dean Woolrich observed that in engineering, unlike law, the accrediting agencies approve programs rather than schools and that the top-flight engineering schools search for professors who look ahead rather than backward. Dean Kozelka reminded his listeners that a few years of study in a professional school is simply a prologue and reviewed the methods used by schools of business administration to keep graduates abreast of developments in their fields of special interest. Dean Olson indicated that whereas a medical student pays tuition of some $800 per year it costs the school about $3,500 to train him and that the desire for post-graduation or post-admission study must be instilled in students by the faculties of the professional schools prior to graduation.

Discussion leaders at both sessions were Dean Lehan K. Tunks, of Rutgers University Law School, and Dean O. S. Colclough, of George Washington University School of Law.

Officers re-elected were: Herbert W. Clark, of San Francisco, Chairman; Whitney North Seymour, of New York, Vice Chairman; Shelden D. Elliott, of New York, Secretary-Treasurer. Len Young Smith, of Chicago, immediate past Chairman of the National Conference of Bar Examiners, was elected to serve out the unexpired term of the late Judge Paul Brosman. Dean F. D. G. Ribble, of the University of Virginia, and George W. Parker, Jr., of Fort Worth Texas, were re-elected to membership on the Council.

SECTION OF PUBLIC UTILITY LAW

■ At the Association's Annual Meeting in Dallas, the Section of Public Utility Law held a series of four well-attended sessions covering various current problems in the public utility field. For the first time a joint session was held with the Section of Mineral Law to discuss "Atomic Energy Problems in Industry Today".

The first session held on Monday afternoon was presided over by Alfred P. Ramsey, of Baltimore, Mary-

Donald C. POWER

Fabian Bachrach

land, Chairman of the Section's Standing Committee To Report on Recent Developments in the Field of Public Utility Law. After an introduction by Ralph M. Besse, of Cleveland, Ohio, Chairman of the Section, four panel reports were presented to cover recent developments of major interest in the public utility law field.

Stephen H. Fletcher, of Washington, D.C., presented a paper on "Surcharges of Local Taxes to Subscribers in Localities Imposing Them."

Randall B. Luke, of Cleveland, Ohio, presented a paper on "The Conflict Between Zoning Laws and Electric Utility Facility Requirements".

James F. Pinkney, of Washington, D. C., presented a paper on "Exemption of Transportation by Motor Vehicles of Agricultural Commodities from Regulation Under the Interstate Commerce Act".

Lawrence L. Stentzel, of New York presented a paper on "Recent Developments in the Large Irregular Air Carrier Investigation".

Subsequent to these papers presented by panel members, Mr. Ramsey summed up recent developments in the field and called attention to the change in the general format and presentation of this year's standing committee report. For the first time additional emphasis has been placed on the summary write-up at the beginning of the report, the current report having a summary of about thirty pages compared to previous summaries of only twelve pages. This additional emphasis on the report summary provides a new and expanded commentary on the recent decisions in the field.

The second session was held on Tuesday morning and was devoted to the rate regulation problems facing the natural gas industry. Clarence H. Ross, of Chicago, Illinois, presided over a series of addresses given by members of the Section presenting opposing points of view concerning the regulation of independent producers of natural gas. The opposing points of view were presented by Carl Illig, of Houston, Texas, representing the point of view of the producer, Willard Gatchell of Washington, D. C., General Counsel, Federal Power Commission, representing the point of view of the Commission, Edwin F. Russell, of Brooklyn, New York, representing the point of view of the distributor, and Charles W. Smith, Former Chief, Division Rates and Accounts, Federal Power Commission, Baltimore, Maryland, representing the point of view of the consumer. Because of the location of the meeting in Dallas, and because of the current lively interest in this topic, this session of the Section's meeting was particularly well received.

The next session was held on Tuesday afternoon, at which John B. Prizer, of Philadelphia, presided. Under the topic of "Problems in Transportation Regulation", addresses were presented by David I. Mackie, Chairman, Eastern Railroad Presidents Conference, on "Scope of Operation of Surface Carriers: Common, Contract, Private"; Robert I. Clark, of Dallas, Texas, on "Freedom of Entry in Air Transportation", and George L. Haskins, Professor of Law, University of Pennsylvania, on "Uncontrolled Exercise of the State Taxing Power as an Oppressive Burden on Interstate Carriers". This session devoted to problems in the field of transportation law has become a regular feature of the Section's activities and has served to broaden the scope of work in a field which has hitherto, in the Section's activities, been neglected.

On Wednesday morning, a joint session was held with the Section of Mineral Law covering the topic "Atomic Energy Problems in Industry Today". At this session E. Blythe Stason, Dean of the University of Michigan Law School and Chairman of the Special Atomic Energy Committee of the American Bar Association, presented a paper on "Legal Problems in the Development and Utilization of Atomic Power"; Jacques P. Adoue, of Houston, Texas, presented a paper on "The Role of the State in Atomic Energy Legislation", and Arthur W. Murphy, of Columbia University, New York, presented a paper on "Financial Protection Against Atomic Hazards". These papers cover an area in the field of public utility regulation which is a new and growing one and received special attention from an interested audience.

Subsequent to the afternoon speakers program, the afternoon business session of the Section was held. At this Section business meeting, Bradford Ross presented the Report of the Section's Committee on the Hoover Commission Report. Mr. Ross first outlined the Committee's and Section's previous recommendations concerning the work of the Association's over-all Committee on Legal Services and Procedure (Sellers Committee). Mr. Ross explained the basis for the Committee's opposition to the Sellers' Committee recommendations which would generally require substantially stricter rules of evidence and procedure in administrative proceeedings with provision for interim and *de novo* review of various questions raised as well as providing for the creation of a special administrative court. It was pointed out that this would tend to undermine the effective and speedy operation of the various regulatory agencies before whom members practiced, causing delay and greater expense in administrative proceedings. Accordingly a draft resolution was adopted by the Section requesting the House of Delegates to reconsider its position. The debate in the House of Delegates on this resolution is reported elsewhere in this issue. (See page 1061).

The following persons were then elected to fill the vacancies in the Section's Council and officers: Chairman, Donald C. Power, of New York, New York; Vice Chairman, Randall

J. LeBoeuf, Jr., of New York, New York; Secretary, Henry F. Lippitt New York, New York; Last Retiring Chairman: Ralph M. Besse, of Cleveland, Ohio, and Section Delegate to the House of Delegates; C. Oscar Berry, of Washington, D. C. The newly elected members to the Council are: Alfred P. Ramsey, of Baltimore, Maryland; Willard Gatchell, of Washington, D. C.; H. Templeton Brown, of Chicago, Illinois; James F. Pinkney, of Washington, D. C., and W. James MacIntosh of Philadelphia, Pennsylvania, who was appointed Chairman of the Standing Committee to prepare the 1956-1957 Report on recent developments in the field of public utility law.

The proposed program for the July, 1957, meeting of the Section in both New York and London, England, was then outlined.

The meeting was informed that a program had already been tentatively planned for the London meeting to include the chief legal officers of the British Electricity Authority, the Gas Council and the British Transportation Board, with arrangements underway to have the local and area board solicitors from the gas, electricity and transportation industry attend the London sessions so that Section members attending the London meetings would have an opportunity to meet English solicitors in the same field. It is accordingly hoped that a representative selection of Section members from all of these fields may be present at the London meeting next year.

SECTION OF PATENT, TRADEMARK AND COPYRIGHT LAW

■ Papers were presented before the Dallas meeting of the Section by Robert Watson, Commissioner of Patents of the United States, and by Cesar Sepulveda G, Commissioner of Patents of Mexico.

In co-operation with the Section of Corporation, Banking and Business Law, a moot argument was presented of a case involving intricate problems of corporation law and trademark law.

Cyril A. SOANS

Moffett

Extensive consideration was given to matters of international patent and trademark practice in view of the recent meeting of the International Patent and Trademark group in Washington.

The Section thoroughly enjoyed the hospitality provided by the Texas members.

The newly elected officers are as follows: Cyril A. Soans, of Chicago, Illinois, Chairman; Frank E. Foote, of Pittsburgh, Pennsylvania, Vice Chairman; and Joseph Gray Jackson, of Philadelphia, Secretary. New members of the Council are Wallace H. Martin, of New York, New York, last retiring Chairman, and Lawrence C. Kingsland, of St. Louis, Missouri.

SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW

■ Culminating a year of activity and progress, the Section of Real Property, Probate and Trust Law closed its administrative year at the Dallas meeting.

The Section participated in Regional Meetings held in New Orleans, St. Paul and Hartford.

The New Orleans meeting of the Section was presided over by Dean Edward C. King, of Boulder, Colorado; the St. Paul meeting by Daniel M. Schuyler, of Chicago; and the Hartford meeting by Carl F. Schipper, Jr. of Boston.

A meeting of the Council was held in New Orleans in conjunction with the Regional Meeting.

The Executive Committee of the Council consisting of the Chairman and Vice Chairman of the Section, the three Divisional Chairmen and the Secretary, met in Chicago in March to complete the arrangements for the Annual Meeting in Dallas,

Edward C. KING

which were left in the hands of Council Member Edward B. Winn, of Dallas. It was found that the earlier Council meeting held in New Orleans, at which time many of the preliminary arrangements were made, was of great benefit and it is believed that a Council meeting of the Section should be held not later than sixty days after the Annual Meeting for preliminary discussions rather than wait until the mid-year conference.

At the annual meeting, Council meetings were held on Saturday, August 25, Sunday, August 26 and Wednesday, August 29. All sessions of the Section were held in the Roof Garden of the Adolphus Hotel, the first at 2:00 P.M. on Monday, August 27. The Section Chairman introduced Edward Winn, requesting him to report on the entertainment which had been arranged for the Section.

The Chairman then announced the following Nominating Committee: Rush H. Limbaugh, Chairman, Cape Girardeau, Missouri; Earl S. MacNeill, New York, New York; J. Pennington Strauss, Philadelphia, Pennsylvania, and Charles L. Strouss, Phoenix, Arizona.

The Chairman introduced Robert H. Frazier, of Greensboro, North Carolina, Vice Chairman and Director of Real Property Law Division, who presided during the remainder of the afternoon and presented the following program: "Relative Priority of Government and Private Liens", by Harold L. Reeve, of Chicago, Illinois; "Circuity of Liens—A First Rate Legal Puzzle", by Lawrence L. Otis, of Los Angeles, California, and "Hedges Against Inflation in Leases on Real Property", by Samuel S. Sherman, Jr., of Den-

ver, Colorado.

The session adjourned at 4:30 P.M., and the Section was invited to attend the reception and cocktail party sponsored by the Dallas Estate Council. Approximately 300 attended this reception at the Insurance Club of the Statler Hilton Hotel, which proved to be most delightful.

On Tuesday morning, August 28, the Section held its traditional annual breakfast for officers, members of the Council, and chairmen and members of committees. This was at 8:00 A.M. in the North Room of the Hotel Adolphus. A brief Council meeting was held immediately following this breakfast.

The second meeting of the Section was held beginning at 9:30 A.M., August 28. After an introductory statement by the Section Chairman, J. Stanley Mullin, Vice Chairman and Director of the Probate Law Division, of Los Angeles, California, was introduced as the presiding officer for this program. Mr. Mullin presented Alice M. Bright, of Chicago, who spoke on "Permitting a Testator To Choose the Place for Probate of His Estate, Policy and Problems".

The next speaker was Frank L. McAvinchey, Probate Judge of Flint, Michigan, whose subject was "The Not-Quite Incompetent Incompetent".

Following Judge McAvinchey, Victor R. Hansen, former Judge of the Superior Court of Los Angeles, California, now Assistant Attorney General of the United States, spoke on the subject "Holographic Wills".

The annual Section dinner and entertainment Tuesday evening, August 28—at the Godfrey Ranch—approximately sixteen miles north of Dallas, from 4:00 to 11:00 P.M. was a most delightful occasion. Transportation was furnished, and swimming, horseback riding, square dancing, music and a chuckwagon dinner was the order of business. Approximately 450 members of the Section and guests attended.

The following officers were elected: Chairman, Edward C. King, Boulder, Colorado; Vice Chairman, Joseph Trachtman, New York City, New York; Vice Chairman and Director of Real Property Division, Paul E. Basye, Burlingame, California; Vice Chairman and Director of Probate Division, Stanley Mullin, (who was re-elected for the third time) of Los Angeles, California; Vice Chairman and Director of Trust Law Division, Carl F. Schipper, Jr., of Boston, Massachusetts; for the Council: Robert H. Frazier, Greensboro, North Carolina (term to expire in 1960); Charles F. Grimes, of Chicago, Illinois (term to expire in 1960). For Section Delegate to the House of Delegates, William A. Lane, Immediate Past Chairman of the Section, of Miami, Florida.

The Chairman then surrendered the meeting to the new Chairman, who, after preliminary remarks, presented Joseph Trachtman, Vice Chairman and Director of Trust Law Section, of New York City, who presided during the remainder of the meeting.

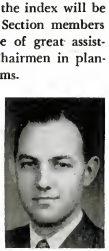
Mr. Trachtman introduced James O. Wynn, of New York, who spoke on "A Vacuum in Our Law"—management of property of persons in the twilight zone between competency and incompetency.

James B. Lewis, of New York, New York, spoke on the subject of "Trusts in Divorce Settlements".

At the annual meeting it was reported that the membership of the Section had reached an all-time high of more than 5,000.

The Advisory Committee of the Section recommended the preparation and adoption of a Section handbook to outline the duties and functions of the officers, Council and committees of the Section. The handbook was prepared under the direction of Dean Edward C. King and Harold L. Reeve. Mr. Reeve is a past chairman and honorary member of the Section. It is believed that this handbook will greatly improve the administrative procedure of the Section and enable the officers, Council and Committees of the Section to function with greater efficiency.

Through the assistance of the American Bar Association, a topical index of all Section proceedings has been prepared. This index covers proceedings from the inception of the Section down to the present date. It is expected that the index will be made available to Section members and it will also be of great assistance to Division Chairmen in planning future programs.



David W. RICHMOND

Harris & Ewing

SECTION OF TAXATION

■ The annual meeting of the Section of Taxation (approximate membership, 6300) was held in Dallas, August 23-28.

After meetings of the officers and Council and committee chairmen on August 23-24, three days were devoted primarily to committee reports and proposed legislation. The printed annual program contained checklist surveys with respect to important case, ruling and regulation developments during the current year (in the various substantive and procedural areas of federal taxation).

At luncheon sessions, addresses were delivered by Wilbur D. Mills, Chairman of the Subcommittee on Internal Revenue Taxation of the House of Representatives, and by Russell C. Harrington, Commissioner of Internal Revenue. Mr. Mills' remarks emphasized primarily the work scheduled for his subcommittee during the remainder of 1956 and proposed action of the subcommittee if it is reconstituted in 1957. Commissioner Harrington announced certain changes in conference procedure in the Internal Rev-

enue Service.

Thirty recommendations for legislation were adopted by the Section and received the approval of the House of Delegates of the Association. (See page 1063 of this issue of the JOURNAL.) These recommendations will be transmitted to the appropriate committees of Congress during the next session.

On August 28, there were two programs. In the morning, John Paul Jackson, of Dallas, and Professor Joe Driscoll, of Washington, spoke on the subject, "Oil, Damn Yankees, and Subchapter K". Also, Harold Marsh, of San Francisco, spoke on "Community vs. Common Law Property: How To Avoid Inter-Spouse and Intra-Family Warfare in Inter-State Investments". In the afternoon, there were five talks on state and local taxation.

The Section elected the following officers for the current year: David W. Richmond, of Washington, D. C., Chairman; Lee I. Park, of Washington, D. C., Vice Chairman, and Harry K. Mansfield, of Boston, Massachusetts, Secretary.

The following were elected as Council members for three-year terms: Marvin K. Collie, of Houston, Texas; Scott P. Crampton, of Washington, D. C., and Randolph W. Thrower, of Atlanta, Georgia.

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1956 - 1957

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OUR YOUNGER LAWYERS

William C. Farrer, Secretary and Editor-in-Charge, Los Angeles, Calif.

■ More than 350 delegates and registrants representing forty-two states, the District of Columbia, the Territory of Hawaii and twelve local affiliate Junior Bar units, participated in the 23d Annual Meeting of the Junior Bar Conference in Dallas, Texas, August 24-28, 1956. As officials for the calendar year 1957, the Conference elected the following: William C. Farrer of Los Angeles, California, National Chairman; Bert H. Early of Huntington, West Virginia, Vice Chairman; and Kirk M. McAlpin of Savannah, Georgia, Secretary. In addition, the Conference selected the following representatives to the Executive Council: Second Circuit, Arthur M. Lewis, of Hartford, Connecticut; Fourth Circuit, James M. Ballengee, of Charleston, West Virginia; Sixth Circuit, Kennedy Legler, Jr., of Dayton, Ohio; Eighth Circuit, Bryce M. Fisher, of Cedar Rapids, Iowa; Tenth Circuit, Payne H. Ratner, Jr., of Wichita, Kansas; Ninth and Tenth at large, Richard C. Diblee, of Salt Lake City, Utah.

Directors' Meeting

Following the election of officers, the Chairman-elect announced the appointment of the following Directors to serve during 1957: William Reece Smith, Jr., Tampa, Florida, Personnel Director; Gibson Gayle, Jr., Houston, Texas, Information Director; Calvin H. Udall, Phoenix, Arizona, Services Director; and A. D. Van Meter, Jr., Springfield, Illinois, Professional Director.

A meeting of the Directors will be held November 2-4, 1956, at the Hotel Commodore in New York City, with primary emphasis placed on committee plans for the ensuing year and for the Annual Meeting, which will be held July 13-15, in New York, and July 24-30, in London.

The Mid-Year Meeting of the Executive Council in conjunction with the General Session of the Conference will be held at the Edgewater Beach Hotel in Chicago, Illinois, February 15-17, 1957.

Plans for 1957

Full Conference support of the Jenkins-Keogh Bills and similar legislation to provide retirement benefits for the self-employed has been pledged by the new officers, and bipartisan campaign committees consisting of a Republican and a Democrat in each circuit will co-ordinate J.B.C. interest, publicity and support for the campaign to be conducted in co-operation with the American Bar Association's Committee on Retirement Benefits.

All members of the Conference who are interested in assisting in this particular phase of activity are requested to so advise the Chairman-elect.

Award of Merit

The Chairman of the Conference Committee on Awards of Merit for State and Local Units, Vernon T. Reece, of Denver, Colorado, received application for awards submitted by both state and local organizations. After extended deliberation, this Committee selected the applications of the Connecticut State Junior Bar and the Waco, Texas, Junior Bar as the winners of Awards of Merit for the outstanding state and local units during the year 1955-1956. Honorable mention was accorded to the Junior Bar Section of the Bar Association of the District of Columbia and the Philadelphia Junior Bar. Vice Chairman-elect Bert H. Early presented the award to the Connecticut State Junior Bar on October 23, 1956, at Hartford, Connecticut.

Storey Elected Section Delegate

At the Second General Session of the Conference on August 25, 1956, Robert G. Storey, Jr., was elected to represent the Conference as Section Delegate to the American Bar Association House of Delegates to succeed Stanley B. Balbach. Mr. Storey will serve until the next Annual Meeting.

Personal Finance Argument

Four outstanding members of the Junior Bar Conference appeared before the Appellate Court of the State of Franklin, sitting in the Terrace Room of the Baker Hotel on August 27, 1956, to argue a stated case on the question "Does the purchase of a conditional sales contract by a

Harold W. Tobin (center) of San Francisco, California, and E. Lawrence White (left) of Spokane, Washington, the winning team in the annual argument sponsored by the Conference on Personal Finance Law, receive an honorium from the Treasurer of the Conference, Jackson R. Collins, of New York.

finance company become a loan because the finance company participates in the making of the contract?" The decision of the distinguished court, consisting of J. E. Hickman, Chief Justice of the Supreme Court of Texas, as Presiding Judge, and Dean Robert G. Storey, of the Southern Methodist University School of Law, and Eugene C. Gerhart, of Binghamton, New York, found in favor of the defendant, whose counsel were Harold W. Tobin, of San Francisco, California, and E. Lawrence White, of Spokane, Washington. Capable arguments were presented to the court by counsel for the plaintiff William J. Fuchs, of Philadelphia, Pennsylvania, and Donald Maroldy, of New York City.

For the second successive year, the Conference co-operated in an experiment to show that full press photography coverage can be permitted in a courtroom without disturbance to the court, the participants or the 250 spectators, and over 300 photographs were taken during this argument, which was the tenth in the series begun in 1947. Following the decision of the Court, a reception was tendered in honor of the judges and participants.

Tax Notes

■ **Prepared by Committee on Publications, Section of Taxation, George D. Webster, Chairman; John S. Nolan, Vice Chairman.**

Dual Purpose Charitable Organizations
by Andrew B. Young, Philadelphia, Pennsylvania

■ It might seem that so long as an organization does only that which the Internal Revenue Code permits exempt organizations to do, there would be no adverse federal income tax consequences affecting the organization and its contributors. However, such is not the situation.

Section 501(c) of the 1954 Internal Revenue Code in enumerating organizations that are exempt from taxation conditions these exemptions upon the organization being "operated exclusively" for certain designated purposes. This group includes title holding companies, 501(c)(2), religious and charitable organizations, 501(c)(3), social welfare organizations, 501(c)(4), social clubs, 501(c)(7), fraternal benefit organizations, 501(c)(8), and certain cemetery companies, 501(c)(13). The tentative Regulations applying to Subchapter F of Chapter 1 of the 1954 Code (principally Reg. 1.501(c)(3)-1(a)(2) interpret the adverb "exclusively" as being of the same character as "principal", "primary", "predominant", and "substantial" and suggest that the existence of "incidental", "secondary", "subservient", or "less than substantial" activities will not deprive an organization of the exclusive character of operation that is a condition precedent to exempt status. It has been suggested that the Regulations (which have substantial authority in decided cases) might more accurately state that "exclusively" means "almost exclusively". On the face of it, the Regulations would appear to indicate a liberal attitude on the part of the Government. Unfortunately, there are some indications to the contrary.

In a recent case, *Allgemeiner Arbeiter Verein*, 25 T.C.—No. 47 (1955) (on appeal to the Third Circuit), an organization of more than a thousand members maintained (at a cost for 1948 of more than $33,000) facilities including a club room, bowling alleys, and other social and recreational facilities—all admittedly within the scope of what is now Section 501(c)(7)—which were availed of by all members. About 60 per cent of the members were entitled to sickness and death benefits of the maximum value of $540 and $225 respectively which were administered under a beneficial account that was segregated. This activity is normally exempt under Section 501(c)(12) of the 1954 Code. The total payments out of this account were $3,990 in 1948, and payments into it were $7,388. The Tax Court admitted that the two activities treated separately were exempt but held that the organization was not operated exclusively for pleasure, recreation and other nonprofitable purposes and thus was not an exempt social club, and the income from social activities did not fit into the pattern of gross income necessary for exempt benevolent insurance associations. Substantially the same result was reached this year by the Third Circuit in its *per curiam* affirmance (228 F. 2d 906) of the Tax Court's decision in *Allied Trades Club, Inc.*, 23 T.C. 1017 (1955), where an admittedly social organization "operates a small members' death benefit fund which was commenced by a transfer of $500 from its general funds and for which a fourth of dues paid is set aside." The organization was held not to be operated exclusively for pleasure, recreation, etc. The tentative Regulations to the contrary notwithstanding, the suspicion persists that exclusively may not mean "almost exclusively".

The problem becomes particularly acute where the organization is trying to meet the elusive test that separates organizations of a charitable (*i.e.*, religious, educational, etc.) character under Section 501(c)(3) from those of a social welfare character which are covered by Section 501(c)(4). Both subsections employ the phrase "operated exclusively" so that the affected organizations are vulnerable under the doctrine of the *Allgemeiner Arbei-*

ter Verein and *Allied Trades Club, Inc.,* cases. In addition, contributors to the organizations are involved since contributions to social welfare organizations under Section 501(c)(4) are not deductible charitable contributions under Section 170 of the Code, while those to charitable organizations under Section 501 (c) (3) are income tax deductible. An attempt to draw a line of practical application between these two types of organizations is beyond the scope of this note; suffice it to say that the commendable attempt of the tentative Regulations, 1.501 (c) (3)-1 (c) and 1.501 (c) (4)-1), to draw a line that is administrable has evoked comment to the general effect that the more that is said, the worse it gets. It is fair to observe that the courts have had as much trouble in drawing the line as has the Service and the Treasury.

The impact of the dual purpose exempt organization issue upon the issue of deductible contributions to exempt organizations was emphasized by a recent Revenue Ruling, Rev. Rul. 56-329, 29 I.R.B. 12, which held that contributions to a fraternal organization for erecting a building to be used both for charitable and fraternal purposes are not deductible (as the facilities were not to be used "exclusively" for charitable purposes). The ruling recognized the validity of a prior ruling, Rev. Rul. 54-243, 1954-1 C.B. 92, holding that contributions to a separate fund maintained by a fraternal organization, the fund to be used for charitable, etc., purposes, may give rise to a deduction. The emphasis upon form versus substance that is observable in all these cases is an interesting variation of the usual pattern.

A variation of the dual purpose organization problem is to be found in cases where there is a change in purpose or in method of operation that removes an organization from the application of one paragraph of Section 501 (c) to another or else from an exempt status to a non-exempt status. The latter change, naturally, has serious tax consequences, but even the former may, as in the cases where the change is from a 501 (c) (3) organization (charities) to a 501 (c) (4) organization (social welfare organizations), since contributions to the former are deductible contributions, while those to the latter are not. What is particularly frustrating to the Government is that the contribution may be made when the organization is operating in good faith as a charity under Section 501 (c) (3) and the change in purpose or in method of operation may occur in a later year.[1] The thin line between the (c) (3) and (c) (4) organizations makes this problem all the more difficult to solve equitably. It is one of the factors behind the Service's policy, Rev. Rul. 54-164, 1954-1 C.B. 88, of refusing to rule upon newly organized organizations until operating results for twelve months are available and submitted, but it should be observed that no specific lapse of time can effectively solve this type of problem. Abuses have arisen in cases of organizations that have been in existence for years and this circumstance does not justify the Service's "one-year policy".[2]

Dual purpose organization and the doctrine of "exclusiveness" has been resorted to by the Government in recent years in a completely different posture in order to meet what the Government considers abuses. In many cases of "lease-backs" or in other transactions involving substantial amounts of "unrelated business income" (which is taxed at ordinary rates by Sections 511-514) and particularly where the otherwise exempt organization is acquiring property or a business for a "full" price or from a promoter or affiliated person, the Government has taken the position that the organization is no longer being "organized and operated exclusively for religious, charitable . . . purposes". Provisions in the tentative Regulations suggest that the Government may apply a relative income test in determining exclusiveness. In at least one case, still in the administrative stage, the Service has taken the position that where an otherwise clearly exempt publicly supported organization derives a large part of its gross receipts (though–due to allowable deductions–a small part of its net receipts) from so-called "business leases" (as defined by Section 514), the organization loses its exempt status, and contributions to it will not be deductible charitable contributions. If this position prevails, the unrelated business income provisions of the Code become surplusage.

What is the lesson to be learned from these trends? Legislation may be in order to change the results in the *Allgemeiner Arbeiter Verein* and *Allied Trades Club, Inc.* cases, and legislation of limited application to cure the situation was introduced in the Congress in 1956, too late for serious consideration. Meanwhile, an attorney should seriously consider a separation into completely separate organizations of activities that tend to come within different paragraphs of Section 501 (c) of the Code. The operation of activities that come under any paragraph of Section 501 (c) in a separate organization with non-exempt activities in a different organization would appear to be a necessity. Until the courts can dispose of the Government's position on the unrelated income situation, the use of a separate organization to conduct unrelated business would seem to be prudent.

Where charitable deductions are important, the poorly defined line between Section 501 (c) (3) and 501 (c) (4) organizations must be scrupulously observed, and it goes without saying that attempts to "cover too much ground" in a charter or deed of trust can create serious difficulties in the securing of an exemption ruling that is so important to organizations seeking contributions from the public. The view is widely held that the problem of distinguishing between these two types of organizations can be successfully resolved only by legislation.

1. See *infra.*
2. Of course, in a subsequent year a donee organization may not be concerned with tax exemption since it has no income. This would seem to be a loophole in the present law.

BAR ACTIVITIES

Charles Ralph Johnston • Editor-in-Charge

Herbert B. RUDOLPH

■ The State Bar of South Dakota held its Silver Jubilee Meeting at Sioux Falls on September 6-8. President M. Q. Sharpe, of Kennebec, presided over this well attended meeting. In his annual address presented before the general assembly he told of the progress and of the future objectives of the Association.

The new officers are Herbert B. Rudolph, of Pierre, Justice of the Supreme Court of South Dakota, President; and Wallace A. McCullen, of Rapid City, Vice President. Leo D. Heck, of Pierre, was re-elected Secretary-Treasurer.

Newly elected members of the Board of Bar Commissioners are John A. Engel, of Avon; Blaine Simons, of Sioux Falls; William R. McCann, of Brookings; Harry T. Fuller, of Mitchell; Frank S. Tait, of Milbank; Clair B. Ledbetter, of Pierre; Charles H. Whiting, of Rapid City; Harry R. Stephens, of Belle Fourche; John P. Sauer, of Huron; Lyman A. Melby, of Faulkton; Marvin S. Talbott, of Winner; Ronald R. Johnson, of Lemmon; Mose S. Lindau, of Aberdeen; Wallace A. McCullen, of Rapid City, and John Zimmer, of Marion.

Dwight Campbell, of Aberdeen, was re-elected Association Delegate to the House of Delegates of the American Bar Association.

The South Dakota State Judges' Association met on September 6, with President Alex Rentto, of Pierre, Justice of the Supreme Court, presiding. Judge Rentto was re-elected President and Judge Eugene Christol, of Rapid City, was elected Secretary-Treasurer. T. M. Bailey, Jr., Chairman of the State Bar Public Information Committee, discussed a proposed jury pamphlet being prepared for distribution to the public.

Following an appropriate address by President Sharpe, a goodly number of 50-year practitioners were honored by a special ceremony at which they were presented with gold lapel buttons commemorating their "Half Century of Service". These "elder statesmen of the law" were Oliver H. Ames, of Clark; Virgil D. Boyles, of Yankton; Andrew Bogue, of Parker; Roy T. Bull, of Redfield; A. O. Bunde, of Sisseton; P. M. Burns, of Timber Lake; James Byrnes, of Huron; C. C. Caldwell, of Sioux Falls; C. M. Carroll, of Miller; A. A. Chamberlain, of Huron; Irwin A. Churchill, of Huron; M. E. Culhane, of Minneapolis, Minnesota; Alden Cutler, of Wessington Springs; George Fletcher, of Aberdeen; J. F. Frame, of Burke; W. W. French, of Yankton; A. K. Gardner, of Huron; Frank Gladstone, of Lemmon; Sioux K. Grigsby, of Sioux Falls; George P. Hall, of Brookings; Herbert Hitchcock, of Mitchell; G. G. Lasell, of Sisseton; T. J. Law, of Clear Lake; J. G. McFarland, of Watertown; W. B. Mallory, of Canton; Thomas Mani, of Milbank; Glenn W. Martens, of Pierre; John T. Medin, of Sioux Falls; Frank Mitchell, of Pierre; C. E. Noel, of Highmore; Frank Scoblic, of Tyndall; M. H. Quimby, of Onida; Chester K. Snyder, of Watertown; W. W. Soule, of Rapid City; C. D. Sterling, of Redfield; Tore Telgen, of Sioux Falls; William Williamson, of Rapid City, and Albert E. Yager, of Lemmon. This impressive scene was preserved by photographs of the ceremony.

Two visiting state bar presidents, R. R. Bateson, of Eldora, Iowa, and Wilber S. Aten, of Holdrege, Nebraska, were among the interested spectators at this ceremony. Each expressed himself as being so impressed that he desired his association to engage in a similar ceremony honoring the 50-year practitioners of his own state.

The State Bar of South Dakota has done much *pro bono publico* during the past year. For many months the John Marshall film distributed by the du Pont Company was circulated throughout the state; the Committee on Local Bar Associations was very active and succeeded in revitalizing and reorganizing local associations in all of the Judicial Circuits of the state; the Medico-Legal Committee, in collaboration with the State Medical Association, has arranged for a joint symposium to be held at Huron in November, where common problems concerning procedure in personal injury cases will be discussed and the possibility of an inter-professional code explored; the Committee on Public Information has prepared and distributed pamphlets to the public on various legal matters of general interest; more impetus has been given to the Junior Bar Section and more visits have been made by the officers of this association to the annual meetings and institutes of the Bars of surrounding states.

An excellent institute on federal taxation was presented under the auspices of the American Law Institute and the American Bar Association. The lecturers were Flavel A. Wright, of Lincoln, Nebraska, and Hale McCown, of Beatrice, Nebraska.

Dr. Kenneth McFarland, of Topeka, Kansas, gave the address before the annual banquet, upon a most interesting subject, "Ropes of Gold".

■ A rather unusual and interesting story is found in the annual address of Francis H. Inge, of Birmingham, retiring President of the Alabama State Bar, delivered at its 79th An-

John D. HIGGINS

nual Meeting recently held at Birmingham. He spoke of a number of the activities and accomplishments of the Alabama State Bar, including what probably was its most noteworthy achievement of the year—the defeat of certain bills introduced in the state legislature by a disbarred lawyer with strong political connections, which would have stripped the Alabama State Bar of its disciplinary powers and provided for trial by jury of a lawyer charged with malconduct; the work of the state Judiciary Advisory Council and Commission for Judicial Reform, which is expected to report its findings and recommendations for improving the rules of procedure during the current year; and the remarkable Junior Bar Section, which made much progress toward the establishment of legal aid centers and whose drive for members in the American Bar Association was most successful. The Junior Bar Section also was instrumental in arranging for some eighteen lecturers, not faculty members, to lecture on their specialties before the University of Alabama Law School, and in taking the entire senior class from Tuscaloosa to Montgomery where it was presented to the Supreme Court of Alabama and heard the arguments of a case on appeal to the Court.

President Inge expressed the hope that the new administration would create an effective Public Relations Committee, which he felt could aid substantially in eliminating false and harmful impressions of both lawyers and the administration of justice, and to build respect for law and enlist support for our judicial institutions. He warned that such a committee should conduct its activities with great caution and always in a dignified and tasteful manner; and further warned that a public relations program could not be substituted for an earned respect for courts, lawyers and the administration of justice, saying that in the final analysis such respect can only be obtained and preserved by the day-to-day honest, faithful, dignified, courageous and conscientious conduct of individual lawyers in dealing with their clients and as a result of their exhibiting a strong responsibility for leadership in public affairs.

The current officers of the Alabama State Bar are John D. Higgins, of Birmingham, President; B. E. Jones, of Evergreen, and John D. McQueen, Jr., of Tuscaloosa, Vice Presidents. John B. Scott, of Montgomery, is Secretary, and Jack Crenshaw, also of Montgomery, Proctor. New members of the Board of Commissioners are Hugh Merrill, of Anniston; Robert M. MacLaurin, of Jasper; Elwood Rutledge, of Haleyville, and Murray Battles, of Cullman. Retiring President Inge is the Association Delegate to the House of Delegates of the American Bar Association.

Walter F. BALL

■ The West Virginia Bar Association held its 70th Annual Meeting at White Sulphur Springs on August 30-September 1. President John D. Phillips, of Wheeling, presided.

The new President is Walter F. Ball, of New Martinsville. Vice Presidents are Thomas A. Goodwin, of Wheeling; James T. Dailey, Jr., of Kingwood; John B. Breckinridge, of Summersville; Harry Sherr, Jr., of Huntington; Owen R. Griffith, Jr., of Princeton, and William E. Mohler, of Charleston. J. Ross Hunter, Jr., of Charleston, is Executive Secretary-Treasurer.

New members of the Executive Council are Hawthorne D. Battle, of Charleston; C. H. Hardesty, Jr., of Fairmont; Stanley C. Higgins, Jr., of Fayetteville; W. Paul McWhorter, of Clarksburg; Clarence E. Martin, Jr., of Martinsburg, and John D. Phillips, of Wheeling.

President Phillips in his annual address reviewed the activities of the Association and urged that they be expanded. The subject of "Due Progress of Law" was discussed by Robert L. Hogg, of New York City. He showed the elasticity of the law by referring to its adaptation to meet new economic conditions arising from such matters as the subterranean storage of natural gas, the automobile and aviation industries, atomic energy and life insurance. C. Howard Hardesty, Jr., of Fairmont, delivered a paper on "Injunctive Procedures in Labor Disputes in West Virginia", which was followed by an open discussion.

Dr. Perry Epler Gresham, of Bethany, West Virginia, President of Bethany College, delivered an address at the annual banquet. His topic was "Proud Heritage" and he showed the effect of many famous personalities which have influenced the history of West Virginia. Included were generals, politicians, businessmen and artists ranging from the time of George Washington to that of Eleanor Steber.

■ The Maine State Bar Association held its annual meeting at Rockland on August 28-30. President Robert B. Dow, of Norway, presided. The meeting was well attended, as 200 registered of a total membership of some 700.

The new President is George D. Varney, of Kittery. Vice Presidents are: Herbert E. Locke, of Augusta; William S. Silsby, of Ellsworth, and John P. Carey, of Bath. Sanford L. Fogg, of Augusta, was re-elected Secretary-Treasurer. The new Executive Committee is comprised of

George D. Varney, Herbert E. Locke and John P. Carey, ex officio; Harold M. Hayes, of Dover-Foxcroft; William B. Mahoney, of Portland; Frank F. Harding, of Rockland, and Edward N. Merrill, II, of Skowhegan. The Association delegate to the House of Delegates of the American Bar Association is Robinson Verrill, of Portland.

Two panels were presented before the meeting. The first was on "Federal Practice and Procedure", with Maurice Cox, of Portland, the Clerk of the United States District Court, presiding. Panel members were Peter Mills, of Farmington, United States District Attorney; Charles A. Pomeroy, of Portland, Referee in Bankruptcy, and Ballard F. Keith, of Bangor, United States Commissioner. The other panel covered "Small Law Office Management", with Simon Spill, of Biddeford, presiding. James H. Titcomb of Sanford, and Franklin G. Hinckley, of Portland, were the panel members.

Eight "elder statesmen" of the law who had commenced their fiftieth year in the practice since the last annual meeting were Charles T. Smalley, of Rockland; Louis B. Lausier, of Biddeford; Oscar H. Dunbar, of Machins; Frederick E. Doyle, of Millinocket; Clement F. Robinson, of Brunswick; Edward F. Merrill, of Skowhegan; Henry A. Peabody, of Portland, and Leon V. Walker, of Portland. The Association adopted a resolution honoring these fifty-year practitioners and certificates attesting their status were awarded.

Henry A. Peabody, of Portland, the Cumberland County Register of Probate, addressed the meeting on the subject of "Probate Accounting". Francis W. Sullivan, of Portland, Justice of the Maine Superior Court, gave an address on "Pleading and Practice", followed by a question-and-answer period.

Raymond H. Trott, of Providence, Rhode Island, was a featured speaker before the meeting. His topic was "The Economy of New England".

Charles C. FOX

■ The Indiana State Bar Association held its 60th Annual Meeting at French Lick on August 16-18. President Thomas M. Scanlon presided over this busy meeting. Four hundred and thirty-five members attended.

New officers are Charles C. Fox, of Jeffersonville, President, and Benton E. Gates, of Columbia City, President-Elect. Arthur H. Gemmer, of Indianapolis, was re-elected Secretary-Treasurer. Newton M. Goudy, of Indianapolis, was reappointed Executive Secretary. Elected members of the Board of Managers are George F. Stevens, of Plymouth; Max C. Peterson, of Hartford City; Gordon G. Bemmer, of Crawfordsville; LeRoy Baker, of Bloomington; Verne S. McClellan, of Mount Vernon; and Thomas C. Bigley, of Columbus.

New officers of the Young Lawyers Association are C. Severin Buschmann, Jr., of Indianapolis, State Chairman; Edward P. Elsner, Jr., of Seymour, Vice Chairman, and Thomas L. Murray, of South Bend, Secretary.

The House of Delegates of this Association, with William T. Fitzgerald, Chairman, presiding, took action upon a number of committee reports. Among these was its approval of a recommendation that the Indiana justice of the peace fee system in both civil and criminal cases be abolished; that justices of the peace be placed upon a salary basis; and that they be deprived of the power to perform the marriage ceremony. An important resolution adopted was that authorizing the Committee on Improvement of Civil Practice to request the Supreme Court of Indiana to appoint an advisory committee to study and recommend revised rules of civil procedure.

The newly formed Patent Law Section, with Chairman Maurice A. Weikart, of Fort Wayne, presiding, heard an address by Leo P. McCann, of the Board of Appeals of the United States Patent Office, Washington, D. C. His subject was "Appeals in the Patent Office".

Membership in The Indiana State Bar Association continues to grow, being 2,628 as of July 15.

Two excellent legal institutes were presented, and, despite perfect weather, outranked the French Lick golf courses in popularity. A panel of three tax experts discussed recent developments in the tax field. Chairman of the panel was Lester M. Ponder, of Indianapolis; participating panel members were James M. Barrett, Jr., of Fort Wayne, Robert R. Girk, of Indianapolis, and James F. Thornburg, of South Bend. A workshop on evidence was held. Professor Austin B. Clifford, of Indiana University, discussed the borderline of hearsay; and Frederick P. Bamberger, of Evansville, presented a synopsis of the rules of evidence as interpreted by the Indiana courts.

At the annual banquet a reproduction of the menu used at the first annual banquet of the Association in 1897 was placed on each table. Several members of The Chicago Bar Association Committee on Entertainment regaled the diners with parodies in song and verse, and continued with musical selections during the open house held by retiring President Scanlon and incoming President Fox.

The 1957 annual meeting of The Indiana State Bar Association will be held on September 19-21 at French Lick.

■ The State Bar Association of North Dakota held its 56th Annual Meeting at Minot on August 9-11.

President Norman G. Tenneson, of Fargo, presided over this well attended meeting.

New officers are Floyd B. Sperry, of Golden Valley, President; John Hjellum, of Jamestown, Vice Presi-

dent, and Elver T. Pearson, of Bismarck, Secretary-Treasurer. Lynn G. Grimson, of Grafton, was reappointed Executive Director.

Newly elected members of the Executive Committee are President Sperry, Retiring President Tennesson, Vice President Hjellum, Joseph C. McIntee, of Towner, William S. Murray, of Bismarck, and M. S. Byrne, of Bowman. Vernon M. Johnson, of Wahpeton, was re-elected Delegate to the House of Delegates of the American Bar Association.

Eight section meetings, which included panel discussions and how-to-do-it demonstrations, made up the educational sessions of the meeting.

A special ceremony was held and certificates presented to each of ten members who have commenced their fiftieth year in the practice of law.

Featured speakers were Harold R. Medina, Judge of the United States Court of Appeals for the Second Circuit, who told members attending the Annual Banquet about the problems of the communist trial over which he presided, and Barnabas F. Sears, of Chicago, who addressed the meeting on "Judicial Reform–Today's Challenge to the Bar".

Bread-and-Butter Materials

■ It is our purpose to notice in this section of this department bread-and-butter articles and other materials (found in bar association publications) which are of especial merit and are so general in their nature as to be helpful to our members everywhere in their daily work. To this end, we shall endeavor to examine as many of the bar association publications as possible; and also we shall welcome having our attention directed to any materials which meet such standards.

Trial Briefs, edited by Gerald C. Snyder, of Waukegan, Illinois, former Chairman of the Illinois State Bar Association Section on Civil Practice and Procedure. Issued monthly, with yearly Index containing citations both to official state reports and to the North Eastern Reporter. (Any issue will suffice as an example of all. Each issue averages 8 pages.) Single copy: $1.00. Order from: Illinois State Bar Association, 424 South Second Street, Springfield, Illinois.

The first place winning entry of the Illinois State Bar Association in the 1956 Award of Merit competition of the American Bar Association contained the statement "We submit 'Trial Briefs' (Exhibit B) to be the finest section enterprise of any bar association in the United States." An examination of the fourteen issues published to date with their comprehensive index, demonstrates the justification for this high praise, and the real contribution made by *Trial Briefs* toward winning this high honor.

Trial Briefs has to be seen to be believed. It is like no other legal publication we ever have seen. It is written in a breezy, often humorous, pungent style; presenting problems which parallel those actually faced by the lawyer in his daily practice, with mythical clients becoming involved in seemingly impossible situations, followed by remarkable solutions accomplished by ingenious trial procedures. Its unique style is coupled with a direct authority to support each solution so the reader is entertained and educated at the same time.

Trial Briefs is the brain child of Gerald C. Snyder, of Waukegan, Illinois. As Chairman of the Section on Civil Practice and Procedure of the Illinois State Bar Association, Mr. Snyder wished to build his Section of one hundred twenty-five, to two hundred members. Thomas S. Edmonds, of Chicago, then President of the Illinois State Bar Association, suggested that a newsletter might stimulate an increase in membership of the Section. Mr. Snyder conceived the idea of furnishing the trial lawyer with trial tips which would be valuable and of practical help by being usable in meeting the daily problems of his practice. By supplying information concerning serious pitfalls facing the trial lawyer, by removing the camouflage from some difficult barriers he must hurdle, and by supplying a late authority on new or little known helpful procedures, all in an interesting and readable fashion and in a publication to be called *"Trial Briefs"*, he hoped to reach his goal of two hundred members.

Paraphrasing Mr. Snyder's words: After deciding upon the *content* of *Trial Briefs* the next problem was how to make it *readable* and carry an *impact*. As no periodical in the legal field has gotten completely away from the Ivory Tower, perhaps *Trial Briefs* would be more *readable* if we did just that.

As to *emphasis* or *impact*—the trial lawyer does not argue his case in a *monotone*. In defending, he says "The Plaintiff ran through a *stop sign*, going *90 miles an hour*, and crashed into the *side* of our *slowly moving* truck!!" That emphasis of the good trial lawyer is translated into writing by *underscoring* and *exclamation marks*. Those are the only tools available to put *emphasis* and to supply *gestures* in writing. So *Trial Briefs'* "ununderstandable underscoring" (shown here as italics) is merely *written* emphasis and gestures.

For the first issue, intensive research was conducted. Seventy-eight cases were read, analyzed and considered, to secure the *five* used. The first issue of *Trial Briefs* was prepared and mailed to all members of the Illinois State Bar Association.

Within a few days *three thousand* lawyers had registered in the Section. Letters poured in from throughout the state, enthusiastically praising *Trial Briefs* and demanding that it be continued in its "simple, friendly and easily digestible language" which is "practical, lucid and invaluable". More than one hundred enthusiastic letters were received, stating "the information, knowledge and pointers are invaluable", "the 'off the cuff' discussion is the easiest method of digesting the important topics presented", and that "it's refreshing to have such

extremely important legal problems presented with such marvelous legal insight and clarity in the friendly, yet impelling" words used in *Trial Briefs*.

Trial judges from throughout the state wrote that they were most appreciative of *Trial Briefs* and were keeping back issues for ready reference. Seven Appellate Court Justices did likewise. Typical was this quotation from the letter of one Illinois Appellate Court Justice:

> When I first saw a copy of the publication I was immediately impressed not only with its unique style but the most valuable matter contained therein. Your Section is to be congratulated upon the service it is rendering to both Bar and Bench.

Finally, a Justice of the Supreme Court wrote:

> All of us on the Court will keep watching *Trial Briefs*.

He added that *Trial Briefs* was an outstanding demonstration of how difficult legal problems could be made into interesting and even fascinating reading.

It quickly became apparent that the impact and the large and important circulation of *Trial Briefs* created a serious responsibility, so it was decided that as a matter of policy which was and is strictly adhered to, *Trial Briefs* must never be used to serve an individual or partisan cause; and that any controversial matter, or any matter which might affect the administration of justice or the Association should be submitted to the President, and to the member of the Board of Governors of the Association then assigned to the Civil Practice and Procedure Section, Owen Rall, of Chicago.

What started out as a limited service to a few trial lawyers, has developed into an eagerly awaited monthly distribution to over *four thousand* (as of August 30, 1956) Illinois lawyers of clear solutions of real and often encountered problems, supported by the most recent authority. In fact, frequently the authority is an opinion not yet published in the Illinois advance sheets. *Trial Briefs* is prepared for permanent binding, with each issue containing some five actual problems and their solution supported by authority.

The fact that the Bench reads *Trial Briefs* presents a further opportunity for substantial service. Procedural situations which defeat substantial justice, and which otherwise might not be brought to the attention of the Supreme Court for years, are graphically presented in *Trial Briefs* in their most cogent light. This brings a bad situation to the immediate attention of the Supreme Court where it may be possible to correct it by adoption of a court rule. Likewise, bar policies are set forth in the same interesting style, creating an impact far greater than a mere statement of the policy.

Since the proof of the pudding is in the eating, and since your editor believes that there just is no other way to get the full flavor of *Trial Briefs*, three examples of problems and their solutions appearing therein follow.

Here's how *Trial Briefs* states legal problems and their answers:

From the February, 1956, issue, at pages 5-6:

> How Technical Can You Get?
>
> If you are one of those *easy-going* fellows who thought there was no difference between reviving a dormant judgment by *scire facias* and reviving it by action on the judgment, and were chided for your *laxity* by the first issue of Trial Briefs (August, 1955), you can *relax* again. The Supreme Court has just dumped another *useless technicality* overboard.
>
> A glance at the August issue will refresh your recollection of the *dramatic* story of *Impecunious Joe*, whose judgment creditor discovered, one day before the judgment attained the *ripe old age* of 20, that Joe was *in the chips*. On short notice, what to do to *restore the manhood* of the judgment and establish it as a *lien* on Joe's newly acquired real estate? Trial Briefs, as in duty bound, warned that to be *on the safe side* you'd better *file an action instead* of an *affidavit in sci. fa.* proceedings. Why? The Appellate Court for the First District had held that in sci fa. it is *not* the filing of the affidavit nor the issuance of the writ that restores potency, but the entry of the judgment of revivor, and *judgment of revivor after 20 years is too late;* on the other hand, the *filing of an action* within 20 years would toll the statute. (*Smith* v. *Carlson*, 6 Ill. App. 2d 271, 127 N.E. 2d 257)
>
> The last act of this drama, though, provides a *happy ending* for lawyers who don't see any point in being technical *just for kicks*. The Supreme Court granted leave to appeal, and, in a decision entered January 19, 1956 (*Smith* v. *Carlson*), 8 Ill. 2d 74, 132 N.E. 2d 513), *reversed*, per Mr. Justice Maxwell:
>
> "We see no reason why there should be any distinction between the two concurrent remedies for the revival of a judgment provided by our statute and we do not believe the Legislature intended any such distinction. . . . The Legislature apparently regarded a scire facias proceeding and the civil action in lieu thereof as concurrent and identical remedies. . . .
>
> "If, as contended by appellee, the commencement of the scire facias proceeding has no effect upon the running of the statute, its entry upon the judgment docket of the original judgment would be a useless act. It would seem rather that the Legislature intended this entry to be made as notice that the revival proceeding has been commenced and the running of the statute of limitations was suspended."
>
> Supreme Court's doing *all right*, don't you think? But how do you suppose it achieves that *impact* without *underscoring*?

From the April, 1956, issue at page 6:

> What A Headache!
>
> "Does Trial Briefs have any suggestion that will help me with Cantankerous Carl? He's driving me nuts!"
>
> So George is worried again. He has a good Plaintiff's case. His opponent is aptly described as "tough" and will make you prove your name if he could possibly make that an issue in the case.
>
> "O.K., George, again let's have the facts."
>
> *Facts:*
>
> George filed the usual complaint alleging *ownership* of the offending car in the Defendant.
>
> Cantankerous Carl *denied* that ownership.
>
> George didn't *notice* this denial until just before trial.
>
> "I don't have time to get proof from the Secretary of State."
>
> What To Do?
>
> Call the Defendant under Section 60 (of the Ill. Civil Practice Act) and ask him if he has *liability insurance*

on this car that was involved in the accident.

"Yes, and get thrown right out on my ear. Our Judge is *death* on that insurance stuff. He'd grant a Motion to withdraw a juror so quick it would make my head swim."

"Well, George, if you can withstand the *initial ire* of His Honor, and get him to read *Pheano* v. *Leisner*, 5 Ill. App. 2d 223, 125 N.E. 2d 301, you *should* be all right. The Court there states at 228:

Testimony of liability insurance on an automobile is evidence of ownership and is therefore *material*, and in this case because of the *pleadings denying ownership*, plaintiff had a right to prove that defendant had taken out a policy of insurance on the car as a circumstance tending to *prove ownership*, and the mere fact that such evidence might tend to prejudice the minds of the jury in arriving at a verdict is *not sufficient ground for excluding it*. (Emphasis supplied)

His Honor may very well see that Cantankerous Carl has had his come uppance and may stop plaguing his opponents and defend his cases upon the *real issues*.

Here's how *Trial Briefs* stimulates attendance at association meetings by rendering a real service in publicizing panel discussions of practice problems (at pages 6-8 of the same issue):

HURRAH—HERE'S ACTION!

In the February issue of TRIAL BRIEFS we told you that Bob Brunsman's Section Committee on the Civil Practice Act and Rules was functioning so as to give you *up-to-the-minute data;* and that questions about the New Act and Rules sent to Professor Edward W. Cleary at the University of Illinois College of Law, Urbana, would be *answered*. Now hear this:

Don Dobbins writes from Champaign: (Statement of the problem—omitted.)

And here's the answer Don received from Ed Cleary: (Statement of the solution, with citations—omitted.)

DO YOU WANT MORE ANSWERS?

O.K., you can have them! But you're going to have to go to the Annual Meeting, May 3, 1956 in Springfield. And boy *will it be worth-while!!* Here's the tentative program Bob Brunsman is lining up:

TIME: 10:30 A.M. until Noon May 3, 1956.

PLACE: Annual Meeting, Springfield, Illinois.

PROGRAM—A new type *Panel* with *Punch!*

An active Downstate Trial Judge.
An active Chicago Trial Judge.
An active Downstate Trial Attorney.
An active Chicago Trial Attorney.
And *here's* the *Punch*.

All questions sent to Professor Edward W. Cleary, University of Illinois College of Law, Urbana, Illinois, before May 1, 1956, will have been analyzed and *will be discussed*.

All written questions *you* give to the panel on *May 3, 1956*, will be analyzed and *discussed*.

So brother, don't miss it!

Find out *in advance* the thinking of the Trial Judges and experienced Trial Counsel on these new problems created by the New Practice Act and Rules. Don't wait until an Appellate Court *slaps you down*. Be in Springfield at this important meeting at 10:30 A.M., May 3, 1956.

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The Executive Committee of the Section on Civil Practice and Procedure is hopefully awaiting those *decisions* you are giving under the New Act and Rules. TRIAL BRIEFS is fairly panting to pass along those pearls of wisdom. Will you send us any written decisions already rendered involving the New Act and Rules, *today*.

That this publication fills a real need and has become a vital force in the life of the Illinois lawyer is attested by the wide and enthusiastic support and participation of lawyers, judges, bar association officers and professors who contribute suggestions and solutions of problems to the editor and who prepare and participate in numerous panel discussions presented before meetings of the Illinois State Bar Association. While he labors prodigiously upon *Trial Briefs*, Mr. Snyder states emphatically that the undertaking is just too much for any one man, and that the contributions of others are both invaluable and indispensable to the success of the publication.

Your editor has had a difficult time in deciding whether to classify this most useful aid to the busy practicing lawyer as "In the Public Service" or as "Bread-and-Butter Material". It distinctly belongs in both categories.

As a means of dramatizing and sustaining interest in bar activities, as a time- and labor-saving aid in keeping abreast of current problems and developments in the trial practice field for both the office and the trial lawyer, and as a splendid contribution to the doing of speedy and more perfect justice, it is difficult to see how any bar association could do better than to follow the formula of *Trial Briefs*. It should be a powerful force to build membership and to ensure against loss of members for any bar association.

The Illinois State Bar Association will be happy to have any other bar association which cares to do so, adopt (or adapt) and use the title, format and style of *Trial Briefs* with the hope that it may prove as invigorating and beneficial a force in the affairs of such association as it has in those of the Illinois State Bar Association.

Editor's Note: Should any of you, our readers, desire a copy of any bread-and-butter article or other material mentioned in this section of this department, please send yonr order with your check for the stated single copy price directly to the publication in which it appeared. Should that publication be unable to fill your order, If you will write to the Cromwell Library, American Bar Center, 1155 East 60th Street, Chicago 37, Illinois, and state that such publication is unable to supply a copy, enclosing your check for 25 cents per page (each listing shows the number of pages in the item) to cover costs of copying, handling and postage, the Cromwell Library will send you a reproduction of the item.

Department of Legislation

Charles B. Nutting, Editor-in-Charge

■ The increasing complexity of state legislation has made it essential to provide technical assistance to legislators. The following article by the Director of the Department of Reference and Research, Nebraska Legislative Council, shows how one state has solved this problem.

Assistance for the State Legislature

by Jack W. Rodgers

■ Despite the contention often heard that the states have been almost completely submerged under the expanding exercise of national power, they still remain vigorous partners in our federal system. The ultimate success of this federal system, moreover, will depend to a great extent on their continuing vigor and on their ability to meet the responsibilities imposed upon them by a complex and rapidly changing society.

These responsibilities have grown tremendously during the past twenty-five years. Between 1942 and 1955, for example, total state expenditures increased 278 per cent, total state general revenue increased 216 per cent, and total state debt increased 244 per cent.[1] In addition, the total state tax take in 1955 ($11.6 billion) was an all-time record bag for the annual state revenue hunt. These figures reflect the demands being made on the states for new services and for expanded and improved existing services. The state legislatures, which have the basic responsibility of translating these demands into workable public policies, have borne the brunt of this greater impact upon state government.

Unfortunately, most state legislatures have long operated under outmoded forms and procedures, many of them buried in constitutional vaults impervious to the demands of changing conditions. While interest in legislative reform has quickened during the past few years,[2] not much progress has been made to date in substantively revamping the legislative process. In one area, however, that of providing the legislatures with adequate staff assistance, much has been done to assist them in carrying their increased responsibilities.

While staff aids of various types (bill-drafting, legislative reference, statute revision) have been available to most state legislatures for many years, the major development in the area of providing legislative assistance and services has been the legislative council movement. The National Municipal League, in its first Model State Constitution in 1921, recommended the establishment of state legislative councils to make studies of public problems during the interim between legislative sessions, and to draw up legislative programs for submission to the legislatures. In 1933 Kansas and Michigan became the first states to establish legislative councils. Today, legislative councils, or council-type agencies, are found in thirty-five states, and, significantly, twenty-five of these agencies have been created since 1943.

The typical legislative council is composed of between twelve and twenty senators and representatives. In a little less than one half of the states having councils the membership is divided equally between the two houses, while in the others there are generally more representatives than senators. In three states (Nebraska, Oklahoma, South Dakota) all members of the legislature are members of the legislative council.

In effect, a legislative council is a permanent joint interim committee of the legislature, employing a permanent research staff, and existing for the primary purpose of conducting continuous research into the problems of state government. In some states the council will also furnish other related services to the legislature, such as legislative reference service, fiscal analysis, and bill-drafting. But whatever its responsibilities, the legislative council's ultimate justification is to assist the legislature to meet the governmental challenges of the mid-twentieth century, to help in improving the final legislative product. The role of a typical legislative council can be illustrated with reference to the functioning of the Nebraska Legislative Council, one of the first ones to be established.

The Nebraska Legislative Council was created in 1937 during the first session of the new unicameral legislature, partly in recognition of the basic need of the legislature for information upon which to meet its increasing problems, and in part to provide some leadership in the submission of legislative programs. This was felt to be necessary because the new legislature was non-partisan.

Originally the Council consisted of fifteen members of the legislature. The number was increased to sixteen in 1941, and in 1949 the law was amended to provide that all members of the legislature would be at the same time members of the Legislative Council. This action was taken apparently as the result of the antagonisms expressed by some members toward the bills recommended

1. Adapted from *Compendium of State Government Finances in 1955*, Bureau of the Census, United States Department of Commerce, 1955; and, *State Government Finances, 1942-1954*, Council of State Governments, December, 1955 (mimeo).

2. See, *Our State Legislatures*, Report of the Committee on Legislative Processes and Procedures, The Council of State Governments, Revised Edition, 1948; *American State Legislatures*, Report of the Committee on American Legislatures, American Political Science Association, New York: Thomas Y. Crowell Company, 1954; The New Jersey Commission on Legislative Procedure and Research, *Report and Recommendations*, 1954; *The Legislative Process in Kentucky*, Legislative Research Commission, Frankfort, 1955.

by the Council. They felt that the members of the Council were exercising too much legislative leadership.

The Council is governed by an Executive Board of four members. At the beginning of each legislative session the legislature elects a chairman and a vice chairman of the Board, and the Speaker and the chairman of the committee on committees of the legislature are *ex officio* members. The Board co-ordinates the work of the various Legislative Council committees between legislative sessions and is responsible for the hiring of the permanent research staff. The Nebraska Legislative Council and its research department provide five basic services to the legislature. These will be described briefly in turn.

1. *Interim Research.* The Nebraska legislature, like those of thirty-three of the other states, meets biennially. Unfortunately, governmental problems do not arise just every other year in January. Therefore, one of the principal functions of every legislative council is to conduct continuous research into state governmental problems. Most of the studies assigned to the Nebraska Legislative Council result from legislative resolutions, although others may be assigned by the Executive Board on its own initiative.

At the close of every session of the legislature, the Executive Board meets to appoint committees from among the membership of the Council (which, as has been seen, consists of all members of the legislature) to conduct the studies assigned. The 1955 legislature directed the Council to make eighteen different studies, ranging from meat inspection in the poultry industry and adoption procedures to underground water problems and salaries of state employees. Because of the number of studies it was necessary for some senators to serve on as many as four study committees.

The first step in making a study is for the research department to gather all the information pertaining to the particular subject, including usually the experiences of the other states, and to place it in the hands of the committee members. Public hearings will generally be held throughout the state, not for the purpose of acquiring technical or necessarily pertinent information, but to sound out public opinion and to give those interested in the problem under study an opportunity to express their ideas directly to the committee. It has been found that this public education function has worked very well in keeping the people informed of current legislative research and state problems.

The committee will, in addition to holding public hearings, meet in executive sessions with many persons directly familiar with the problem under study. Also, members of the various executive departments will oftentimes meet with the committees studying matters within their competence, and out of these sessions many valuable suggestions are made and information brought to light.

After the study has been completed the committee meets in executive session to draw up its final report, including any legislative recommendations they may want to make. The Nebraska Legislative Council is one of the several which do come up with specific legislative recommendations. The reports are then printed and distributed.

In November, prior to each legislative session, the entire Council meets in Lincoln to hear and pass on the reports of each study committee. The Council can approve the report in its entirety, approve just parts of it, or reject it entirely. In a great majority of instances the report is approved without change. Undoubtedly the principal reason for this unanimity is the fact that a vote in favor of a Council committee's recommendation does not bind the senator to support it when it appears in the legislature as a bill.

Between the general Council meeting in November and the convening of the legislature in January, the bill-drafter, who is employed by the Council, drafts all legislative recommendations of the several study committees into bill form. When the legislature meets the chairmen of the Legislative Council study committees, or some other member thereof, picks these bills up in the research department for introduction.

These recommendations, of course, are not always enacted into law. The same factors which influence the fate of any bill work just as well on those bills resulting from a Council study. Few bills in any legislative body pass or fail to pass solely on their merits. Even so, it is felt that the mere fact that a study has been made, the issues pinpointed and explained, and the matter brought before the public and aired contributes to a better and more complete understanding and awareness of alternative courses of action. Certainly nothing has been lost.

Since the Council began to operate in 1937, ninety-two major studies of state problems have been made covering almost every conceivable aspect of state government. This is exclusive of the eighteen studies being conducted at the present time for submission to the Legislative Council in November, 1956.

2. *Legislative Reference.* The Council maintains a legislative reference library of about 30,000 books, pamphlets, documents, and journals relating to all aspects of state and local government. This library is open to all public officials and to the general public. Through this library a general information service is rendered to the legislature and to anyone else desiring it.

3. *Bill-drafting.* The bill-drafting service to the legislature is furnished by the Legislative Council beginning one month prior to each legislative session, for the drafting of Council bills, and throughout the session for the use of all the members of the legislature. The high level of the present bill-drafting service has contributed much to the quality of unicameral law-making.

4. *General Research.* The research department of the Legislative Council is available to every member of

the legislature during sessions. He may want information pertaining to a bill he is introducing or to one coming up for a vote, and it is the responsibility of the research department to provide him with it.

5. *Fiscal Analysis.* During each interim between legislative sessions the research department makes a study of the revenue and expenditures of the departments of state government, both for the benefit of the legislative budget committee and the individual members of the legislature. Also, the assistant director of the Council serves as consultant and clerk to the budget committee during each legislative session.

In addition to the above duties, the research department of the Council edits and publishes the *Nebraska Blue Book.* This book contains information on the state and its government, and is widely distributed to members of the legislature, state officials, school libraries, and to the general public.

The Legislative Council has the power to administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of papers, books, accounts and testimony. These powers have never had to be used. The Council has had nothing but the fullest co-operation and assistance of the public and the various departments and agencies of the government.

The success of the Legislative Council in Nebraska depends ultimately upon the forty-three members of the legislature. They receive no extra compensation for their duties as members of the Council, being reimbursed only for their actual expenses while attending Council meetings. During the interim between legislative sessions they may be asked to attend as many as ten meetings of their particular study committee, and some serve on several committees. The senators have carried out these additional duties with a high sense of responsibility, taking time off from their occupations and interests at all times of the year to participate in these studies.

The Legislative Council, in conclusion, is a legislative service agency. It is not claimed that it has revolutionized the state government, but only that it has been of help in improving the legislative process. The ordinary legislator is not equipped to run down the technical details of the great volume of proposed legislation facing him at every session, nor to study carefully the broad governmental problems as they arise. The Legislative Council and its research staff merely make it possible for him to do both so that his final decisions can be based on impartial information.

Practicing Lawyer's guide to the current LAW MAGAZINES

Arthur John Keeffe • Editor-in-Charge

AIRPORTS: The Winter, 1956, issue of the *Journal of Air Law and Commerce* (Vol. 23, No. 1, price $1.75 per single issue, $6 per year's subscription; address, for subscriptions: 1818 Hinman Avenue, Evanston, Illinois; for editorial comment, Professor Edward C. Sweeney, of Northwestern Law School at 1700 K St., N. W., Washington 6, D. C.) carries addresses made at a symposium held by the Civil Aeronautics Administration on the effect that jets will have on our airports. The lead article is by the late Charles J. Lowen, Administrator of the Civil Aeronautics Administration. It states the fearful problems. Can routes be devised to use jets down to a 600 to 800 mile trip? Will manufacturers be able to reduce the external noise of jet engines by eighteen decibels? If so, the J-57 engine would be equal to the DC-6B in noise, not that that is quiet. Because of their external noise, even though they are quiet internally, Idlewild recently refused to allow either the Boeing 707 prototype or the British Comet III to land there. The Port Authority commented it had trouble enough from the noise of conventional piston engines (page 72). Can airports house needed jet fuel? One plane carries 23,000 gallons, or two railroad tank cars. Can airports install water tanks, like the railroad? One jet may load as much as 4800 pounds of *distilled* water to increase take-off power. The heat blast of a jet can burn up a macadam runway, and jet fuel spilled even on some concrete runways will damage. Can we build the runways we need? In this connection, the new jets will weigh 250,000 to 300,000 pounds gross and their mere weight presents an airport problem. These *Queen Marys* of the air ought to have 10,000 foot runways, whereas 5,000 feet has been adequate for piston engine planes. Can the airports do it? The late Charles J. Lowen would assure us the jet-age will give "no real worry" (pages 1-4). E. Thomas Burnard, Executive Director of the Airport Operators Council, is not so sanguine and says (pages 5-6):

> Some idea of the impact of these new and larger types of aircraft can be obtained by imagining that the operators of the intercity buses that serve your community have just announced that the buses are to be doubled in size within the next 3-5 years; that they will be nearly twice as fast and that they will burn diesel fuel instead of gasoline; that your principal city streets will have to be widened and strengthened in order to accom-

modate them; that whether you ride the buses or not, you the taxpayers will be expected to contribute your share to getting the streets ready for these new buses.

And Mr. Burnard states that forty-one airlines have ordered some 672 turbine engine transports of a value exceeding a billion "to be the work horses of the airlines from 1960 to 1975" but they were announced "without advance planning" or prior consultation with airport operators (pages 5-10).

Vice President R. W. Ireland, of United Airlines, has a piece in the issue blocking out the problems. Professor Samuel B. Richmond, of the Columbia Business School, writes on how to increase airport revenue, from which I infer one should locate a hotel and a shopping center there. Cyril C. Thompson who publishes *The Airport Letter* calls attention to the significant use of airports by personal and business planes. Perhaps the finest piece in the issue is that by John L. Donoghue, the engineer in charge of building Chicago's new O'Hare International Airport and rebuilding the Midway and Municipal airports. It is interesting to learn of the percentage lease by gallonage that the airlines made with the City of Chicago and to observe how construction problems are being met. This issue in particular and a subscription should be taken by every lawyer that advises on airports or airplanes. It is outstanding and makes thrilling reading, even for landlubbers like me, without any airplane client.

ATOMIC ENERGY: Consistently year in and year out Duke Law School publishes what I believe to be one of our most valuable law reviews. For reasons I do not understand Duke chooses to call it *Law and Contemporary Problems* and for that reason alone some of us believe that the profession as a whole does not get to know it as it should. There is a *Duke Law Review* published by its law students, but *Law and Contemporary Problems* is published quarterly (address: Duke Station, Durham, North Carolina; price: $5 domestic, $5.50 foreign for a year's subscription, or $2 for a single copy). Each issue is of the symposium type and there are no student notes. This requires doing, and down through the years the Duke faculty have done it well. Melvin G. Sham and J. Frances Paschal, the present editor and the associate editor, deserve great praise for the Winter, 1956, issue (Vol. 21, No. 1) which considers "Atomic Power Development". After a foreword (pages 1-2) by Editor Shimm, Engineer Delbert M. Leppke tells us "The Facts of Atomic Development: Some Aspects of Nuclear Power Economics" (pages 3-13). Most interesting to me was to discover there are at present in operation "five design approaches" for the manufacture of electricity from atomic energy. The "pressurized water" approach by the Babcock and Wilcox Company for Consolidated Edison at Peekskill, New York, at an estimated operating cost of 8.6 mills ($.0086) per kilowatt hour as against 7.4 mills for "conventional coal"; the "boiling water" approach of General Electric for Commonwealth Edison near Chicago at 8.4 mills per KWH; the "sodium-graphite approach" for Consumers' Public Power District, of Columbus, Nebraska, at 11.35 mills per KWH for uranium fuel and 9.3 mills per KWH for uranium-thorium; the "aqueous homogeneous" approach of Foster-Wheeler Corporation and "also more recently by Westinghouse" for Pennsylvania Power and Light Company at 8.2 mills per KWH; and, the "fast breeder" approach of Atomic Power Development Associates for Detroit Edison and Associates at Detroit, Michigan, at 11.3 mills per KWH. Mr. Leppke states that "the acid test" is the actual operating experience of these five installations and "during this interim period", he says "any discussion of costs necessitates a number of intuitive or educated guesses", but he believes that as "operating techniques" improve, "nuclear fuels" will compete with "fossil fuels". And it is obvious, if coal costs exceed 8.2 mills per kilowatt hour, as they doubtless do in England or the Philippines, then the "aqueous homogeneous" approach of Foster Wheeler and Westinghouse appears today to be competitive. Robert M. Northrop, a Michigan Fellow, writes on "The Changing Role of the Atomic Energy Commission in Atomic Power Development" (pages 14-37). Professor Morgan Thomas of Michigan's Political Science School writes on "Democratic Control of Atomic Power Development" (pages 38-59). Professor Richard A. Tybout of Ohio State's Department of Economics writes on "The Public Investment in Atomic Power Development" (pages 60-90). Harold P. Green, a lawyer in Washington, D. C., writes on "Information Control and Atomic Power Development" (pages 90-112). Bennett Boskey, formerly Deputy General Counsel of the Atomic Energy Commission, writes most interestingly on "Some Patent Aspects of Atomic Power Development" (pages 113-131). Mr. Boskey analyzes the changes in the 1954 legislation and his piece is a "must" for any lawyer facing a patent problem. It was particularly encouraging for me to read the good opinion Mr. Boskey has of the 1954 changes as until then I was under the delusion that we were laboring under the 1946 legislation. Herbert S. Marks, of the Washington, D. C., Bar, writes on "Public Power and Atomic Power Development" (pages 132-147). Daniel Wit, Professor at Michigan, writes on "Some International Aspects of Atomic Power Development" (pages 148-181); and, the symposium concludes with "The Role of the States in Atomic Development" by Professor William A. W. Krebs of M.I.T. and his Research Associate, Robert L. Hamilton (pages 182-210). I think this is a splendid job for which Duke Law School and Professors Shimm and Paschal, thereof, deserve the gratitude of the profession.

In the *George Washington Law Review* for April, 1956 (Vol. 24, No.

5), there appears an article by Arvin E. Upton entitled, "The Impact of Atomic Energy on American Industry". It was originally a speech at a panel discussion at George Washington Law School on its Law Day Celebration. Mr. Upton explains the different types of licenses granted by the A.E.C. under the 1954 Act in terms of the construction and use of a reactor. Apparently there are several unexplained inconsistencies in the Act with respect to the authority of the A.E.C. to sell or distribute nuclear material. (The George Washington Law Review, 720 20th St., N. W., Washington, D. C.; price: $1.)

CONFESSIONS: A most interesting note on *Cranor* v. *Gonzales*, 226 F. 2d 83 (9th Circuit), certiorari denied 350 U. S. 935, appears in the May, 1956, issue of the *Stanford Law Review* (Vol. 8, No. 3, pages 451-463; price $1.50; address: Stanford, California). There a federal judge freed on habeas corpus a defendant convicted by a state court. The state courts would not grant habeas corpus. It seems that the state trial judge submitted the confession to the jury which found a general verdict of guilty. There was said to be evidence apart from the confession sufficient to support the verdict. But the federal district court, on hearing a petition for habeas corpus, found that the confession had been coerced. Its decision freeing the defendant seems contrary to the *Stein* case in New York, which concerned the *Readers Digest* killers. Denial of certiorari therefore seems unusual. The note discusses the general problem, the legislative changes suggested and the wisdom of the decision. It is a very valuable discussion.

COPYRIGHTS: "Piracy in High Places—Government Publications and Copyright Law." This article by Maurice B. Stiefel deals with the question of the publication by the Government of copyrighted material as it affects the author's right against the Government, third parties and protection of government publications against unauthorized use. The author traces the cases in these areas and discusses the issue of "public domain" which arises with the publication of material in such governmental organs as the *Congressional Record*. The article also discusses a definition of "government publication". In conclusion the author feels that the copyright laws need revision in order to more fully cover this area. (Address: George Washington Law Review, 720 20th St., N. W., Washington 6, D. C.; single copy price: $1.00; March 1956 issue).

The Rule of Law

(Continued from page 1018)

the decision of the court enforced is the use of that weapon which we of the West abhor, namely, the use of force. There are, as Oliver Wendell Holmes used to insist, some situations which cannot be otherwise resolved.

It is of course the case and it should be recognized that the great democracies adhere to and abide by decisions of the United Nations and the international court, but there is a danger that our adherence to these bodies and our hatred of the use of force may produce, if it has not done so already, a very curious paradox.

Our love of peace, our hatred of force, as the method of arbitrament of international disputes has made it easier for a small country to flout international law, to disregard its obligations and to misbehave than it was before. In the old days of the last century, a threat to repudiate an international obligation or to tear up a treaty was not infrequently met promptly by the threat of the use of force, with the result that the threat to repudiate the international obligation was abandoned. Such law in the international field have methods of preserving the rule of not in recent years been relied upon. But if we are to preserve the rule of law in the international field and secure observances of international obligations, we cannot, none of us,

allow such obligations to be repudiated and torn up with impunity. All the countries of the West desire to see peace established and maintained on a firm and secure foundation, but that foundation cannot exist unless the rule of international law and the sanctity of international obligations are maintained.

So one sees this very curious paradox, the very reluctance to employ force may lead to some nations which formerly would have feared to tear up treaties and repudiate obligations seeking now to do so. This in turn may lead to the conclusion that if the rule of law is to be maintained throughout the world such breaches of it cannot be permitted.

If they are ignored, then those who have torn up their treaties are encouraged to continue along the same path, and the end may well be that which we saw in 1939, a major conflagration in which nearly all nations of the world were engaged.

I feel I have been bold in attempting to address you upon this subject today. It is a very important one and it is because of its importance that I have ventured to submit to you for your consideration some reflections upon it.

I would reiterate if I may, the fact that in relation to this topic, *we lawyers* have a very particular and special responsibility. We lawyers who are also *members of the legislatures of our countries* have perhaps *a greater responsibility*.

My predecessor in my office, the Attorney General in the reign of the first Queen Elizabeth, when Bacon said that "The Generall rules of the lawe were like cometes and wandring stars" replied that "rather they were like the sunne: they have light in themselves and give light to others whereas the stars are but corpora opaca."

So long as our laws have light in themselves, so long as they give light to others (and it is our duty as lawyers to illuminate the law) then I think we may look forward to the continuance of the rule of law and to a continuance of individual rights and liberties.

A Correction:

■ *The September, 1956, issue of the* Journal *carried an article entitled "Judicial Self-Restraint: The Obligation of the Judiciary" by Ralph T. Catterall, of Virginia. In the process of transferring this article from galleys to pages, the last two paragraphs of the article were lost and the article appeared without them. Those two paragraphs read as follows:*

The price of judicial independence is that the people are dependent on judicial self-restraint. The people have made this bargain on the understanding that the judges will render equal justice under law and will not enforce their personal convictions in lieu of law. Those who understand what the court has done can hardly think it immoral to protest and to resist. It has been suggested in support of what the court has done that "world opinion" is pleased by the result. No worse reason could be suggested. No decision of a court is going to stem the torrent of Communist propaganda, and even if it did, the preservation of the Constitution is more important than the approval of the Kremlin. Even those who are most sensitive to world opinion have not recommended that amendments to our Constitution should be made by a vote of three fourths of the members of the General Assembly of the United Nations.

The school decisions have raised acrimonious issues between North and South and within the political parties, and those issues, by exciting specific and dramatic controversies, have obscured the one great issue: whether the people of this country really believe that any immediate reform can possibly be worth more to the United States than the preservation of the Constitution of the United States.

Canadians and Americans

(Continued from page 1026)

verse balance of trade with the United States. You bought in 1955 an enormous amount of our products—more than two and a half billion dollars worth—but that year we bought from you nearly nine hundred million dollars worth more than you bought from us.[7] Canada's trade with the United States is greater than its trade with all other countries combined. As a result, we are very sensitive to any trade regulations and practices you may put into force which might increase our adverse balance with you.

Our respective economic structures differ greatly. This undoubtedly gives rise to trade difficulties between us. Canadian foreign trade per capita in 1954 amounted to five hundred and thirty-six dollars against only one hundred and fifty-six dollars in the U.S.A.[8] Moreover, our exports are much more limited in variety than yours. Canadian exports are chiefly newsprint, lumber, non-ferrous metals and grains. All of these except grains you need and buy from us in great quantities. Canada was once called "the granary of Empire" and the disposal of our wheat is still exceedingly important to the Canadian economy. Much of it went formerly to what are now the soft-currency countries. But today we, like you, are a hard-currency country. As a result it is much more difficult for us to dispose of our wheat surpluses, particularly if we have to compete too adversely with you in the world markets when we both overproduce. But, with the close relationship which exists between our two countries, it should be possible to deal with our respective economic problems in a big broad way, so as not to injure our next-door-neighbor-best customer. Neither of us must get in the position of retaliation against the other.

Perhaps there is a considerable difference in our two countries in our thinking about tariffs. Canadians, on the whole, believe that if the free world countries are to remain free they must be economically strong. We sometimes wonder whether this is possible if the United States makes it too difficult for other countries to sell to it as much as they buy from the United States. Our Ambassador at Washington expressed our view concerning the need for freer trade, when he said last year:

> For reasons of social welfare and national security, it may not be possible for either of our countries to accept the full incidence of the principle of the international division of labour. But we in Canada are convinced that the more that principle can be applied, the better it will be for the economic health and well-being of all countries in the free world.

Of late we have heard a great deal about American investments in Canada. May I emphasize again that Canada is a fast-developing country which needs and welcomes investment capital from the U.S.A. You now have an immense financial stake in Canada; it is said to be a ten billion dollar stake, which is four times greater than American investments in any other country.[9] In the past decade your Canadian investment has doubled and today more than fifty per cent of Canadian mining and smelting, about fifty percent of our manufacturing and about seventy per cent of our petroleum industry is controlled by Americans. And this, it must be understood, is investment capital not debt capital. American investments in Canada have been profitable. These profits flow from Canada to the United States in large amounts, of course after paying very substantial taxes to Canada. But while Canadian natural resources and markets are the source of these profits to American companies, very often the Canadian subsidiary company is not only wholly owned in the United States but is also largely staffed by Americans. Today Canada no longer fears military or political domination by her great and friendly neighbor, but she does fear indirect loss of her sovereignty through economic domination. Might it not therefore be wise for American business leaders to allay this fear by taking Canadians in as junior partners in the Canadian field even though the controlling interest remained American? As the Canadian Minister of Trade and Commerce, who was originally an American, has recently pointed out

> By giving Canadians an active interest in the success of their Canadian

7. 1955 Canadian exports to U.S.A. $2,559,343,000; Canadian imports from U.S.A. $3,452,178,000 ("Canada 1956", page 251).
8. U.S. Consul General's address to Export Study Club, Montreal, April 5, 1956.
9. Address of Assistant General Manager, Bank of Nova Scotia, to Political Science Association June 7, 1956, and *Who Really Owns Canada?* by Peter C. Newman, MACLEAN'S MAGAZINE, June 9, 1956.

subsidiaries, United States companies will, in my view, contribute immeasurably to their own prospects in this country.

In conclusion, I believe that it is of primary importance and that now is the time for us to re-examine our relations—that we might well learn more about the governmental systems of today and the history of yesterday of each of our countries; and that we review our economic policies and our trade practices, so that they may not be allowed to injure our Good Neighbor Policy. If this is done I for one have no fear of what will result. For I am certain we all support the view expressed by the distinguished Chief Justice of the United States when he reminded us both that ours is "the most secure boundary line on earth because it is guarded zealously on both sides solely by friendship". I would therefore ask you, my American kinsmen and confreres, to appreciate sympathetically that Canada, with her unique differences, has a real part to play in your relations with the rest of the free world. Situated as we are geographically and with our close ties with you and the Motherland of Britain, we Canadians, I suggest, are in a favored position to interpret the views of each to the other. If Canada fulfills well this role of its destiny may it not be of great value to the United States and to the Commonwealth—indeed for peace to the whole free world? Yet, this can only be possible if the United States, with generous understanding, encourages Canada to be itself—free to develop her own nationhood, to control her own resources, and to cultivate independence of leadership and her own culture.

The Common Law Man

(Continued from page 1022)

culture had on Goering—it makes him reach for his gun.

Then too, your civil law man likes to have things clear cut with proper principles and definitions. His mind runs on codes designed to cover every conceivable situation in a logical manner. Your common law man is profoundly skeptical, even suspicious, about all this. He is content to move from precedent to precedent settling the circumstances of one case on its own and in accordance with its own facts. He will then proceed empirically to the next. But he will not jump any hurdles before he comes to them. You try to get a ruling on general theory from the Court of Appeal in England and see what happens to you.

We should not underestimate the differences that divide these two men. But these differences, what are they but tiffs within the family? Make every allowance for them and you still find the family likeness very striking.

There are two basic similarities. First, civil law like the common law, is not mainly something imposed from above, by sovereign or legislature. It is the usage of the citizen with his quality or *gravitas*, which I translate as responsibility, refined by generations of subtle thinkers who were also men of affairs, into the corpus juris. Second, it postulates that in the order of things there are qualities of reason and justice capable of being discovered by man and applied to the ever-changing practical affairs of life, qualities that do not derive from the state or any human power but belong to man as a free being by virtue of his inherent character, his rightful standing in the totality of life. This is the *lex natura*, the natural law which, defying definition, has none the less haunted the thought and imagination of the civilians throughout the ages.

I have dwelt on the nature of the common law man and the man of the civil law, not for the sake of displaying my non-existent learning, but because I believe that every practicing lawyer ought every day of his life to keep the images of these men before him. It is they whom he lives to serve and to preserve. They are worthy of his service, for the free and responsible man of the common law and the just and reasonable man of the civil law are the persons who have made Western civilization as we know it, and who need Western civilization with its atmosphere of freedom, responsibility, justice and reason, in which they can live and move and have their being.

I say that these men, nephew and uncle alike are worthy to be served and preserved. I say too that they are in deep need of service and preservation for both are in great danger. Your nation and mine have fought two great wars together for an objective which, in the last analysis, was to save our nations from an attack which had it succeeded would not only have made the material conditions of life intolerable but would also have made the spiritual development of our two men impossible. Thank God we have together warded off that external threat as I

hope and trust we should together ward off any such external threat from whatever quarter it might come.

The danger lies now not in any immediate external threat but in a subtle inward corrosion of the very mind of man.

Your free, responsible, just and reasonable man looks out on our brave new world. He sees an incredible display of force let loose in the world, aircraft and electronics, communications, visible and invisible, enmeshing all mankind, immense powers of control over the secrets of nature carrying frightening responsibility for good and ill. He hears the silence that is in the starry sky broken by the whirring of atoms and electrons. He is half-intoxicated by the success of his own ingenuity and half-terrified by its consequences. He is half-overjoyed by the immense power these things have brought him and half in despair at his servitude to material success. How is he to behave in the face of this Frankenstein monster with his alternating smiles and frowns?

Today's Challenge . . . *The Price of Liberty*

This challenge cannot be avoided or evaded, but it can be faced in various ways. One man will flinch. He will say that the responsibility is too great for an individual to face, the state must shoulder it, and if in return it deprives him of his freedom, why then, the price is not too much to pay. There goes your first deserter from the ranks. Another man will flinch. He will be overawed by the immense power of physical things, almost he will fall down and worship it, he will come to believe in force for its own sake and take care to keep on the right side of it. If in the course of this process justice goes by the board, well is it not rather an old fashioned thing anyway? There goes your second deserter. A third man will become just bewildered. To him life seems nothing but a place of senseless violence in which he wanders lost and clueless. He has surrendered his faith in reason. I have much sympathy for him, but he none the less is a deserter and his unhappy fate is to become the victim of the other two deserters. They batten on him.

These are not metaphysical abstractions; these things are actually happening to men and women all around us. These threats and temptations in one form or another, plain to see or veiled and disguised, knock on the doors of all our minds. Once surrender and in the end a complete nihilism sets in. Your first deserter ends by believing that there is no such thing as personal responsibility or freedom. He surrenders to the state, follows its dictates blindly and is content with such crumbs of comfort as it allows him. Your second comes to believe that there is no such thing as justice. He too surrenders to the state and comes to believe that its particular interests are law. Your third becomes a mere tool. If he was an artist he conforms to any aesthetic theory the state may lay down. If he was a scientist he propagates any doctrine the state may find for the moment expedient. In the process, all three lose all sense of personal or national loyalties and become the slaves of a materialistic dogmatism which seeks to destroy the freedom, responsibility, justice and reason from whose ranks those slaves have deserted.

It would be foolish to suggest that this struggle is one that lawyers as such can settle. It is a struggle for the soul of man involving things deeper even than the law. But we lawyers can and must provide the framework within which the struggle can be settled without bursting the bonds of society. The civil law gave order to a chaotic and violent world. The common law gave unity and order to a chaotic and violent nation. The weapons were freedom, responsibility, justice and reason, and they prevailed. They will prevail again so long as we keep those weapons bright and untarnished in our own hands.

I fear that I have been philosophizing, which is always a dangerous thing to do. Let me end on another note. On Good Friday, April 17, 1778, Dr. Johnson and Boswell went to church at St. Clement Danes in the Strand. Walking home, a few yards from where the Law Society's Hall now stands they met a retired attorney, Oliver Edwards, whom Johnson had not met since college days. The attorney asked the Doctor whether he was a philosopher and said that in his years of practice he had tried to be a philosopher but that cheerfulness would keep breaking in. And so it is with me. This is for me a cheerful—nay a joyful—occasion. I wish to thank you all for your wonderful kindness and hospitality. I bring not only my own personal thanks but the thanks also of the Law Society and of my profession. I bring also the salutations of the solicitors of England and Wales and their cordial welcome to you when you join us in England next year.

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